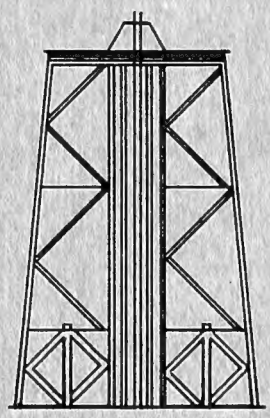
Biological Services Program

FWS/OBS–77/15
March 1978

Environmental Planning for Offshore Oil and Gas

Volume IV:

Regulatory Framework for Protecting Living Resources



WHOI
DOCUMENT
COLLECTION

Fish and Wildlife Service

U.S. Department of the Interior

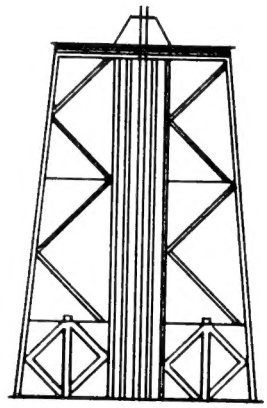
The Biological Services Program was established within the U.S. Fish and Wildlife Service to supply scientific information and methodologies on key environmental issues that impact fish and wildlife resources and their supporting ecosystems. The mission of the program is as follows:

- To strengthen the Fish and Wildlife Service in its role as a primary source of information on national fish and wildlife resources, particularly in respect to environmental impact assessment.
- To gather, analyze, and present information that will aid decisionmakers in the identification and resolution of problems associated with major changes in land and water use.
- To provide better ecological information and evaluation for Department of the Interior development programs, such as those relating to energy development.

Information developed by the Biological Services Program is intended for use in the planning and decisionmaking process to prevent or minimize the impact of development on fish and wildlife. Research activities and technical assistance services are based on an analysis of the issues a determination of the decisionmakers involved and their information needs, and an evaluation of the state of the art to identify information gaps and to determine priorities. This is a strategy that will ensure that the products produced and disseminated are timely and useful.

Projects have been initiated in the following areas: coal extraction and conversion; power plants; geothermal, mineral and oil shale development; water resource analysis, including stream alterations and western water allocation; coastal ecosystems and Outer Continental Shelf development; and systems inventory, including National Wetland Inventory, habitat classification and analysis, and information transfer.

The Biological Services Program consists of the Office of Biological Services in Washington, D.C., which is responsible for overall planning and management; National Teams, which provide the Program's central scientific and technical expertise and arrange for contracting biological services studies with states, universities, consulting firms, and others; Regional Staff, who provide a link to problems at the operating level; and staff at certain Fish and Wildlife Service research facilities, who conduct inhouse research studies.



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Environmental Planning for Offshore Oil and Gas

Volume IV: Regulatory Framework for Protecting Living Resources

by

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Office of Biological Services
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Environmental Planning for Offshore Oil and Gas

Volume I: Recovery Technology

Volume II: Effects on Coastal Communities

Volume III: Effects on Living Resources and Habitats

Volume IV: Regulatory Framework for Protecting Living Resources

Volume V: Regional Status Reports:

Part 1: New England

Part 2: Mid and South Atlantic

Part 3: Gulf Coast

Part 4: California

Part 5: Alaska, Washington and Oregon

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ENVIRONMENTAL PLANNING FOR OFFSHORE OIL AND GAS

FOREWORD

This report is one in a series prepared by The Conservation Foundation for the Office of Biological Services of the U.S. Fish and Wildlife Service (Contract 14-16-0008-962). The series conveys technical information and develops an impact assessment system relating to the recovery of oil and gas resources beyond the three-mile territorial limit of the Outer Continental Shelf (OCS). The series is designed to aid Fish and Wildlife Service personnel in the conduct of environmental reviews and decisions concerning OCS oil and gas development. In addition, the reports are intended to be as helpful as possible to the public, the oil and gas industry, and to all government agencies involved with resource management and environmental protection.

Oil and gas have been recovered for several decades from the Outer Continental Shelf of Texas, Louisiana and California. In the future, the Department of the Interior plans to lease more tracts, not only off these coasts, but also off the frontier regions of the North, Mid- and South Atlantic, eastern Gulf of Mexico, Pacific Northwest and Alaska. Within the set of constraints imposed by the international petroleum market (including supply, demand and price), critical decisions are made jointly by industry and government on whether it is advisable or not to move ahead with leasing and development of each of the offshore frontier areas. Once the decision to develop a field is made, many other decisions are necessary, such as where to locate offshore platforms, where to locate the onshore support areas, and how to transport hydrocarbons to market.

Existing facilities and the size of the resource will dictate which facilities will be needed, what the siting requirements will be, and where facilities will be sited. If the potential for marketable resources is moderate, offshore activities may be staged from areas already having harbor facilities and support industries; therefore, they may have little impact on the coast adjacent to a frontier area. An understanding of these options from industry's perspective will enable Fish and Wildlife Service personnel to anticipate development activities in various OCS areas and to communicate successfully with industry to assure that fish and wildlife resources will be protected.

The major purpose of this report is to describe the technological characteristics and planning strategy of oil and gas development on the Outer Continental Shelf, and to assess the effects of OCS oil and gas operations on living resources and their habitats. This approach should help bridge the gap between a simple reactive mode and effective advanced planning--planning that will result in a better understanding of the wide range of OCS activities that directly and indirectly generate impacts on the environment, and the countermeasures necessary to protect and enhance living resources.

Development of offshore oil and gas resources is a complex industrial process that requires extensive advance planning and coordination of all phases from exploration to processing and shipment. Each of hundreds of system components linking development and production activities has the potential for adverse environmental effects on coastal water resources. Among the advance judgements that OCS planning requires are the probable environmental impacts of various courses of action.

The relevant review functions that the Fish and Wildlife Service is concerned with are: (1) planning for baseline studies and the leasing of oil and gas tracts offshore and (2) reviewing of permit applications and evaluation of environmental impact statements (EIS) that relate to facility development, whether offshore (OCS), near shore (within territorial limits), or onshore (above the mean high tidemark). Because the Service is involved with such a broad array of activities, there is a great deal of private and public interest in its review functions. Therefore, it is most valuable in advance to have some of the principles, criteria and standards that provide the basis for review and decisionmaking. The public, the offshore petroleum industry, and the appropriate Federal, state, and local government agencies are thus able to help solve problems associated with protection of public fish and wildlife resources. With advanced standards, all interests should be able to gauge the environmental impacts of each OCS activity.

A number of working assumptions were used to guide various aspects of the analysis and the preparation of the report series. The assumptions relating to supply, recovery, and impacts of offshore oil and gas were:

1. The Federal Government's initiative in accelerated leasing of OCS tracts will continue, though the pace may change.

2. OCS oil and gas extractions will continue under private enterprise with Federal support and with Federal regulation.

3. No major technological breakthroughs will occur in the near future which could be expected to significantly change the environmental impact potential of OCS development.

4. In established onshore refinery and transportation areas, the significant impacts on fish and wildlife and their habitats will come from the release of hydrocarbons during tanker transfers.

5. A significant potential for both direct and indirect impacts of OCS development on fish and wildlife in frontier areas is expected from site alterations resulting from development of onshore facilities.

6. The potential for onshore impacts on fish and wildlife generally will increase, at least initially, somewhat in proportion to the level of onshore OCS development activity.

The assumptions related to assessment of impacts were:

1. There is sufficient knowledge of the effects of OCS development activities to anticipate direct and indirect impacts on fish and wildlife from known oil and gas recovery systems.

2. This knowledge can be used to formulate advance criteria for conservation of fish and wildlife in relation to specific OCS development activities.

3. Criteria for the protection of environments affected by OCS-related facilities may be broadly applied to equivalent non-OCS-related facilities in the coastal zone.

The products of this project--reported in the series Environmental Planning for Offshore Oil and Gas--consist of five technical report volumes. The five volumes of the technical report series are briefly described below:

Volume I — Reviews the status of oil and gas resources of the Outer Continental Shelf and programs for their development; describes the recovery process step-by-step in relation to existing environmental regulations and conservation requirements; and provides a detailed analysis for each of fifteen OCS activity and facility development projects ranging from exploration to petroleum processing.

Volume II Discusses growth of coastal communities and effects on living resources induced by OCS and related onshore oil and gas development; reports methods for forecasting characteristics of community development; describes employment characteristics for specific activities and onshore facilities; and reviews environmental impacts of probable types of development.

Volume III Describes the potential effects of OCS development on living resources and habitats; presents an integrated system for assessment of a broad range of impacts related to location, design, construction, and operation of OCS-related facilities; provides a comprehensive review of sources of ecological disturbance for OCS related primary and secondary development.

Volume IV Analyzes the regulatory framework related to OCS impacts; enumerates the various laws governing development offshore; and describes the regulatory framework controlling inshore and onshore buildup in support of OCS development.

Volume V In five parts, reports current and anticipated OCS development in each of five coastal regions of the United States: New England; Mid and South Atlantic: Gulf Coast; California; and Alaska, Washington and Oregon.

John Clark was The Conservation Foundation's project director for the OCS project. He was assisted by Dr. Jeffrey Zinn, Charles Terrell and John Banta. We are grateful to the U.S. Fish and Wildlife Service for its financial support, guidance and assistance in every stage of the project.

William K. Reilly
President
The Conservation Foundation

PREFACE

This report is intended to concisely summarize Federal regulatory programs affecting OCS oil and gas leases and related offshore and onshore development. It is designed to explain where and how the Fish and Wildlife Service influences Federal decisions about environmental protection.

This report is presented in three segments, i.e., Fish and Wildlife Service, Outer Continental Shelf Oil and Gas, and Onshore and Nearshore Development Management. These segments are primarily concerned with the rules and procedures that govern OCS-related operations and relate to or are affected by U.S. Fish and Wildlife Service (FWS).

Fish and Wildlife Service functions are defined by law and regulation. The regulatory process affects the scope of FWS activities, their timing, and procedures. It sets the limits for FWS procedures and advice on problems identifiable with FWS programs.

In recent years FWS responsibilities have grown with the expansion of OCS leasing activity. FWS is now charged to assist Interior agencies and the oil and gas industry in the leasing process. At the same time, they cooperate with environmentalists, other Federal agencies, coastal zone planners and other state and local officials.

The text is designed to be read as an overview of the subject, while tabular material, technical footnotes and appendices will supply references for those who need more detailed information.

John S. Banta
Senior Associate

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The author is grateful for the guidance provided by the Office of Biological Services of the U.S. Fish and Wildlife Service, particularly Drs. Allan Hirsch, William Palmisano and Howard Tait. Larry Shanks of that office was especially helpful with substantive aspects of the work, with painstaking editorial assistance, and with coordination of the manuscript review process.

COMMONLY USED ABBREVIATIONS FOR FEDERAL AGENCIES WITH RESPONSIBILITIES FOR OCS OR OCS RELATED ENERGY DEVELOPMENT.

BLM	Bureau of Land Management, Department of the Interior
CEQ	Council on Environmental Quality
COE	Army Corps of Engineers, Department of Defense
DOT	Department of Transportation
EPA	Environmental Protection Agency
FPC	Federal Power Commission
FWS	U.S. Fish and Wildlife Service, Department of the Interior
NMFS	National Marine Fisheries Service, Department of Commerce
NOAA	National Oceanic and Atmospheric Administration, Department of Commerce
NPS	National Park Service, Department of the Interior
OCZM	Office of Coastal Zone Management, Department of Commerce
USCG	U.S. Coast Guard, Department of Transportation
USGS	U.S. Geological Survey, Department of the Interior

PART 1 -- U.S. FISH AND WILDLIFE SERVICE

Part 1 of this report reviews the organizational structure and programs of the U.S. Fish and Wildlife Service.

Part 2 discusses OCS oil and gas leasing procedures, stipulations, and permits for lease tracts of the Outer Continental Shelf under Federal jurisdiction. Because of the number of agencies involved, keeping Federal environmental interests coordinated under the Outer Continental Shelf Lands Act [1] is a complex and time consuming task.

Part 3 of the report concerns the inshore component, i.e., review of permits for nearshore and onshore developments related to OCS oil and gas activities. Pipelines, platform construction yards, service bases and other facilities usually require one or more Federal permits before operation may begin.

1.1 FISH AND WILDLIFE ORGANIZATION AND OBJECTIVES

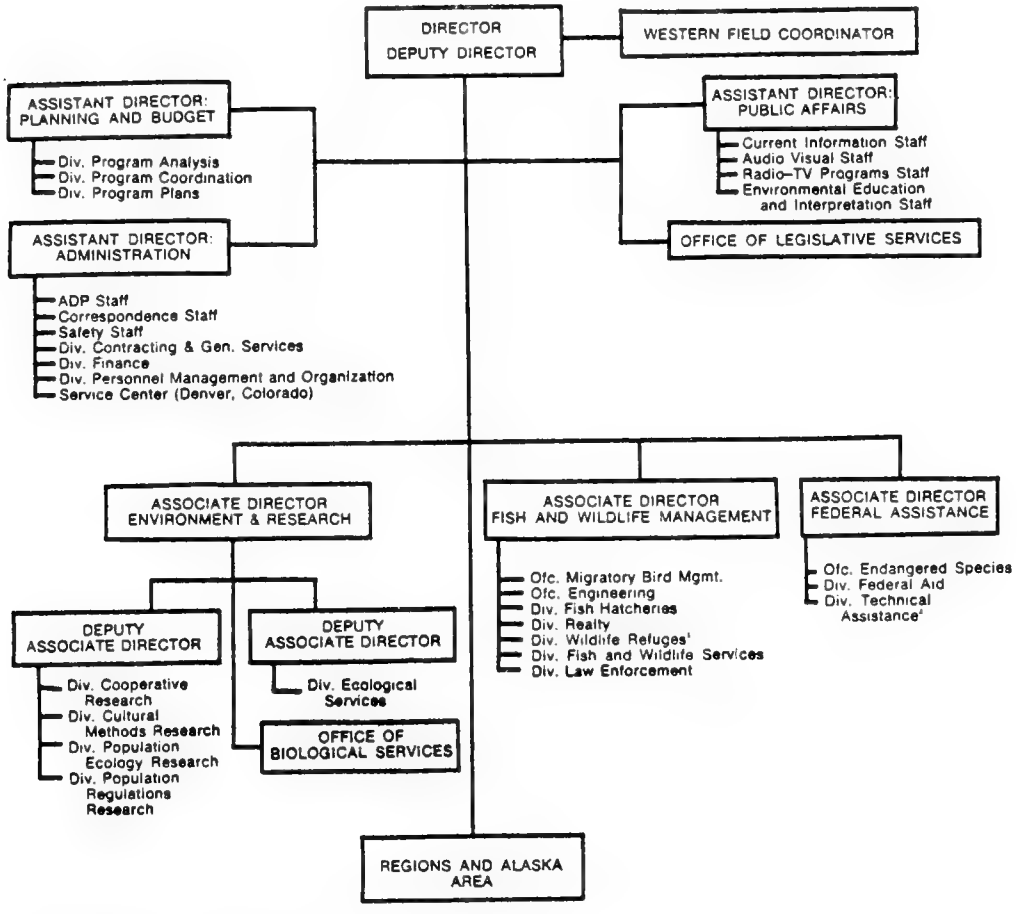
The U.S. Fish and Wildlife Service is the principle Federal Agency responsible for preserving, protecting, and enhancing fish and wildlife resources and environments. FWS has participated in rapid growth of environmental responsibilities in many areas of the Federal Government in the last decade. Passage of a number of Acts of Congress has been instrumental in this transition period; consequently, FWS has been called upon to supply increasingly more complex and useful information and recommendations on fish and wildlife problems and conservation. Some of the programs of the Fish and Wildlife Service and those activities or impacts related to offshore oil and gas development are described in the following subsection.

1.1.1 Fish and Wildlife Service Programs

Fish and wildlife conservation and environmental protection are administered by the Director and Deputy Director and managed by Associate Directors for Environment and Research, Fish and Wildlife Management, and Federal Assistance (Figure 1). The Associate Directors, each with specific programs, manage their programs by program objectives. Although most offshore and coastal environmental problems are managed principally by the Associate Director for Environment and Research through the Biological Services and Land and Water Resources Development Planning Programs, five other programs are related to coastal functions. The seven programs [2] are listed and described below.

1. The Biological Services Program of the Office of Biological Services provides ecosystems information, baseline data, planning and

Figure 1. U.S. Fish and Wildlife Service organization chart (Source: Reference 3).



1. Includes Job Corps and Youth Conservation Corps
2. Includes Animal Damage Control, Indian Assistance, and Military Reservations.

impact evaluation methods and expertise. For offshore oil and gas planning, the program focuses on methodology and generic information needs for onshore, nearshore and offshore review functions and recommendations related to OCS oil and gas leases and permits.

2. The Land and Water Resources Development Planning Program provides environmental impact analysis, permit reviews and recommendations, and provides for direct assistance to other agencies. FWS impact analysis, reports and recommendations, principally for navigable waters, are handled primarily at the Regional and Field Office levels by the Division of Ecological Services.

3. The Biological (Environmental Contaminant Evaluation) Monitoring Program attempts to define trends in chemical residues contaminating various fish and wildlife species. Organized under the Associate Director for Environment and Research, it reviews FWS policy on Service sponsored pesticide uses and provides technical assistance. The program assists in identifying declining coastal bird populations resulting from contamination, and identifying uncontaminated areas that continue to provide satisfactory habitat.

4. The Migratory Birds and the Mammals and Nonmigratory Birds Programs provides direction for management and preservation of wildlife, birds and animals in close cooperation with state conservation departments. Under the Associate Director for Fish and Wildlife Resources, the programs also provide the framework for waterfowl hunting regulations and manages lands within the National Wildlife Refuge System.

5. The Endangered Species Program, under the Associate Director for Federal Assistance, works to preserve or restore both animal and plant species, subspecies, or populations listed by the Secretary of the Interior as endangered or threatened. It includes both direct FWS management and grants to state for protective programs.

6. The Coastal Anadromous Fisheries Program involves conservation, development and enhancement of anadromous fish populations, i.e., those with spawning and juvenile growth in freshwater and maturation in marine waters. The program organized under the Associate Director for Fish and Wildlife Management includes grant, technical assistance and resource management elements.

7. The Grants-in-Aid (Federal Aid) Program provides Federal financial assistance to state game and fish agencies and revenue-sharing payments to counties made via the National Wildlife Refuge Fund. Research, land acquisition, property maintenance and improvement and hunter safety programs may be financed with these funds.

Major Federal Acts that legislate FWS responsibilities are given in Table 1. Those acts most applicable to the effects of oil and gas activities on environments are the Fish and Wildlife Coordination Act of 1958 as amended [4] and the National Environmental Policy Act of 1969 [5].

Fish and Wildlife Service policies and activities are administered and managed on an area basis by Directors of six Regions and the Alaska Area (Fig. 2).

1.1.2 Offshore Oil and Gas Related Programs

FWS programs concerning OCS oil and gas activities and affected coastal areas are directed principally by the Office of Biological Services and the Division of Ecological Services. Although the operations of FWS and these services are described in detail in Parts 2 and 3 of this volume, a brief review of their functions is given here.

The Fish and Wildlife Service reviews proposed Federal land and water development permits or activities primarily for determining potential harmful impacts on habitats and fish and wildlife resources, and for determining measures necessary for eliminating, reducing, or mitigating losses.

Most applications by oil companies for permits for oil and gas activities and related construction in coastal waters within the 3-mile territorial limit or on land are received, and approved or rejected by the U.S. Army Corps of Engineers. The Division of Ecological Services, FWS in cooperation with state agencies and other organizations such as EPA, make recommendation or stipulations, when applicable, for environmental protection.

For oil and gas development permits on the Outer Continental Shelf, applications for permits are received and approved, modified or rejected by USGS, and in special cases, by BLM. For the issuance of permits, attempts to assure environmental safeguards are coordinated through USGS by BLM, Office of Biological Services FWS, NPS, and sometimes other Interior agencies and other Federal agencies. Similar environmental considerations are given to OCS oil and gas leasing activities which are managed by BLM and coordinated with other agencies.

1.1.3 Division of Ecological Services

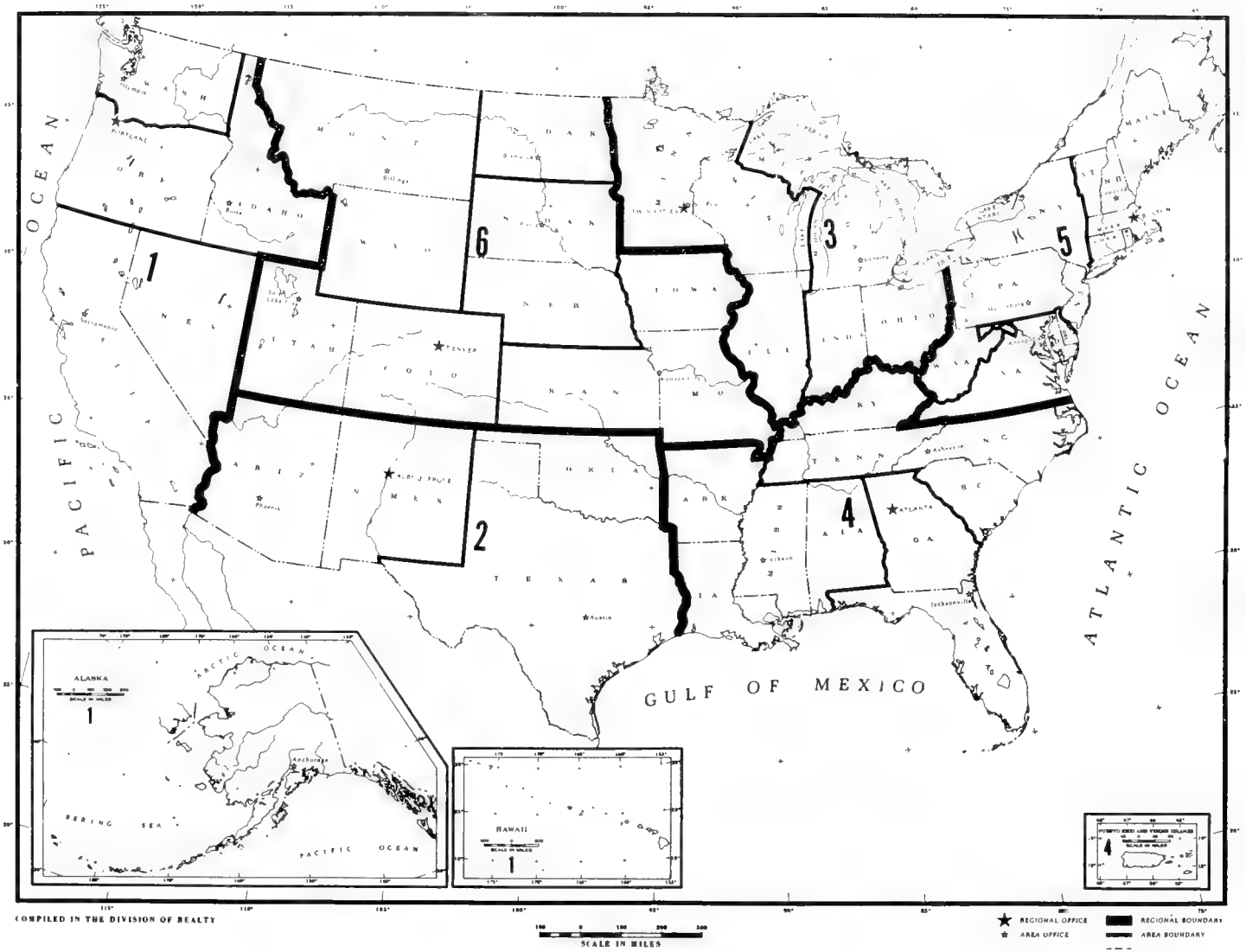
The bulk of regional environmental review activities are conducted by field offices of the Ecological Services Division. For example, the

Table 1. Major Federal Acts Relevant to the U.S. Fish and Wildlife Service Coastal Responsibilities[1/]

Group 1
National Environmental Policy Act
Fish and Wildlife Coordination Act of 1958 as amended
Protection of Navigable Waters
Endangered Species Conservation Act of 1969
Federal Power Act
Department of Transportation and Related Acts
Watershed Protection and Flood Prevention Act
Group 2
Federal Water Pollution Control Act (other than Section 404)
Interstate Land Sales Full Disclosure Act
National Wildlife Refuge System Administration Act of 1966
National Historic Preservation Act of 1966
Outdoor Recreation Act
Group 3
Airport and Airway Development Act
Anadromous Fish Conservation Act
Marine Protection, Research, and Sanctuaries Act of 1972
Migratory Bird Acts
Outer Continental Shelf Lands Act
Wetlands Act of 1961
Wild and Scenic Rivers Act
Wilderness Act

[1/] Grouped in order of importance insofar as they relate to the demands for environmental protection in offshore oil and gas areas and coastal systems.

Figure 2. Fish and Wildlife Service regional boundaries (Source: Reference 6).



Division may review permit applications for the disposal of dredged and fill materials in navigable waters, for ocean dumping, or for structures or works in navigable waters. The Division works closely with counterparts at District and Division levels of the Army Corps of Engineers, and Regional Offices of the Department of Transportation, the U.S. Coast Guard, the National Marine Fisheries Service, and the Environmental Protection Agency. FWS also maintains strong ties with counterpart state agencies.

Ecological Services permit responsibilities were evolved from the Federal Water Pollution Control Act, Section 404, and the Rivers and Harbors Act of 1899, Section 10 [7].

In 1958, the strength of the FWS in environmental decisions was bolstered by the Fish and Wildlife Conservation Act (FWCA) creating a far-reaching advisory role for Federal activities affecting U.S. waters. With the passing of the National Environmental Policy Act of 1969, the need for FWS special expertise gained additional strength. In short, FWS is given the responsibility to take a position on or comment on virtually all applications for Federal Permits for industrial development or Federal Public Works projects that may alter environments in navigable U.S. waters.

1.1.4 Office of Biological Services

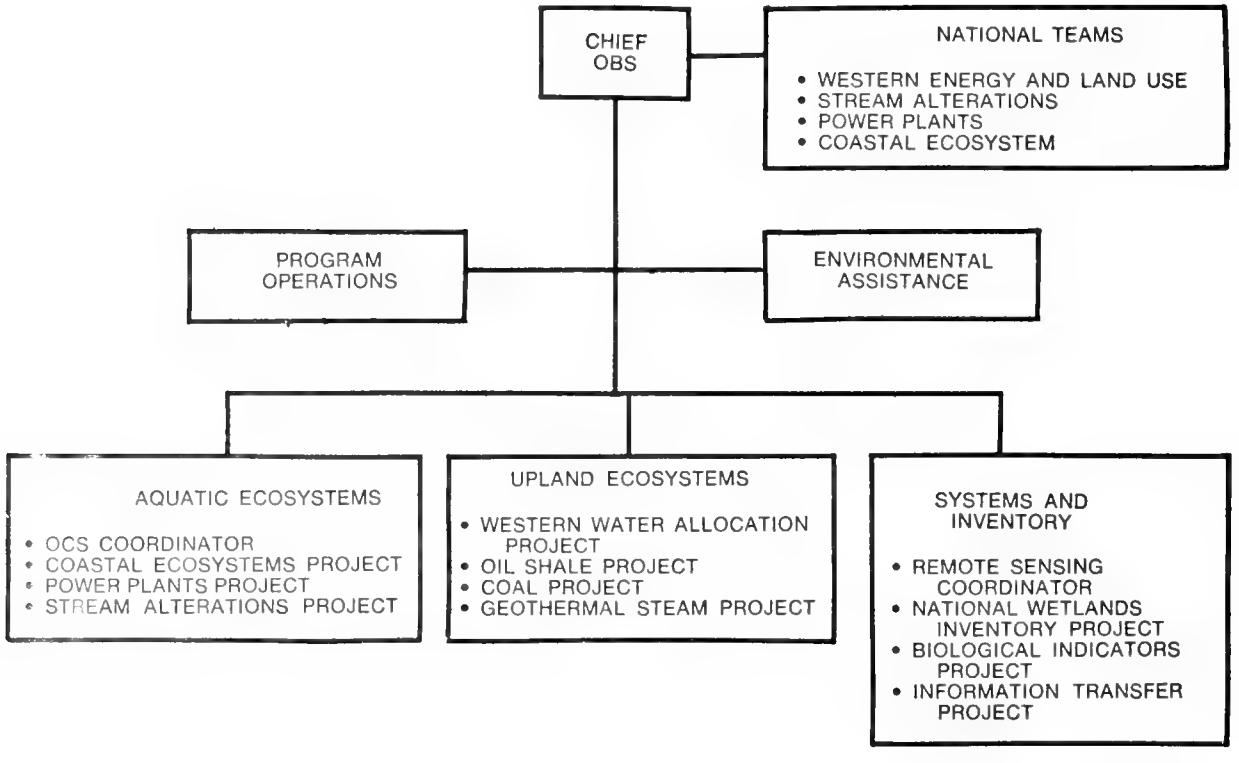
The Office of Biological Services (OBS) of the FWS is organized with a number of subject-oriented national research objectives (Fig. 3). The Coastal Ecosystems Team, based in Bay St. Louis, Mississippi, manages portions of OCS-related research. The Team supports an effort to provide basic data and methodologies for evaluation of OCS fish and wildlife related issues.

OCS oil and gas activity operations are managed by the OCS Coordinator of OBS in Washington, D.C, in cooperation with OBS Regional Activity Leaders and one or more Assistant Leaders in each Region and Alaska.

FWS/OBS participation in the OCS offshore leasing process is channeled through the OCS Coordinator. His responsibilities include review and recommendations concerning environmental issues on BLM oil and gas leasing operations, and on OCS environmental studies. This subject is detailed in Part 2 of this volume.

The OCS coordinator works closely with the Coastal Ecosystems Team and also with Regional OBS Activity Leaders to implement fish and

Figure 3. Office of Biological Services organization chart (Does not include Biological Services functions assigned to Fish and Wildlife Service Regional Offices or National Wildlife Research Centers.) (Source: Reference 8).



wildlife resource and habitat protection in oil and gas leasing and production areas. The coordinator communicates current FWS policies and guidelines to Regional Activity Leaders for day-to-day oil leasing and production decisions. The Coastal Ecosystems Team provides information, methodology, and technical assistance.

OBS Regional Activities Leaders and the OCS Coordinator propose environmental studies that may be conducted by FWS or by BLM and other agencies or institutions. Recent Executive Instructions and Secretarial Orders have called on BLM and USGS to give greater weight to environmental factors in OCS oil and gas development and affected areas.

The OCS coordinator also handles formal contacts, reports, and recommendations with other Department of Interior agencies such as BLM, USGS, and NPS in the leasing and production process.

1.2 FISH AND WILDLIFE SERVICE ROLE IN REVIEWING OCS RELATED DEVELOPMENT PROJECTS

Two Federal programs for environmental study and information exchange created a major role for the Fish and Wildlife Service as an environmental advisor to other agencies that review Federally funded or managed projects related to OCS development. The roles were outlined in the Fish and Wildlife Coordination Act of 1958 as amended, and the National Environmental Policy Act of 1969. Both Acts give FWS cooperative authority with other Federal agencies. FWS regularly communicates with about 24 Federal Program areas, principally through several types of referral/review procedures as indicated in Table 2.

In addition to the above, coordination measures are outlined in Secretarial Order 2974 which formalizes the planning and operating functions of the OCS minerals program in the Department of Interior.

1.2.1 The Fish and Wildlife Coordination Act

Amendments to the Fish and Wildlife Coordination Act of 1958 broadened the authority of the Department of the Interior for consultations with other Federal and state agencies for water-related permits and projects. The 1958 legislation established the following basic FWS review authority [9]:

"...whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any

Table 2. Federal Laws Relevant to Fish and Wildlife Service Responsibilities

Airport and Airway Development Act, as amended, 49 U.S.C. Section 170 to 1703, 1711 to 1727.

Anadromous Fish Conservation Act, as amended, 16 U.S.C. Sections 757a to 757F.

Coastal Zone Management Act of 1972, as amended, 16 U.S.C. Section 1451 to 1464.

Deepwater Port Act of 1974, 33 U.S.C. Section 1501 to 1524; 43 U.S.C. Section 1333.

Department of Transportation and Related Acts, as amended, 49 U.S.C. Sections 1652 to 1657, 305a; 14 U.S.C. Section 92 note; 20 U.S.C. Section 241 note.

Endangered Species Conservation Act of 1969, 16 U.S.C. Sections 668aa to 668cc-6.

Estuary Protection Act, See 16 U.S.C. Sections 1451 to 1464.

Federal Power Act, as amended, 16 U.S.C. Section 791a et seq.

Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1151 et seq.

Fish and Wildlife Coordination Act, as amended, 16 U.S.C. Sections 661 to 666c.

Historic Sites, Buildings and Antiquities Act, as amended, 16 U.S.C. Sections 461 to 467.

Interstate Land Sales Full Disclosure Act, as amended, 15 U.S.C. Sections 1701 to 1720.

Marine Protection, Research, and Sanctuaries Act of 1972, 13 U.S.C. Sections 1401, 1402, 1411 to 1421, 1441 to 1444; 16 U.S.C. Sections 1431 to 1434.

Migratory Bird Conservation Act, as amended, 16 U.S.C. Sections 715 to 715s.

Migratory Bird Hunting Stamp Act, as amended, 16 U.S.C. Sections 718 to 718h.

Migratory Bird Treaty Act, as amended, 16 U.S.C. Sections 668aa, 668bb, 668cc-1, 703 to 708, 709a, 710, 711.

National Environmental Policy Act, 42 U.S.C. Section 4321 et seq.

National Wildlife Refuge System Administration Act of 1966, 16 U.S.C. Sections 668dd, 668ee.

Outdoor Recreation Resources Review Act, as amended, 16 U.S.C. Section 17k note.

Outer Continental Shelf Lands Act as amended, 10 U.S.C. Sections 7421 to 7426, 7428 to 7438; 43 U.S.C. Sections 1331 note, 1331 to 1343.

Protection of Navigable Waters (Rivers and Harbors Appropriation Act of 1899), 33 U.S.C. Section 401, 403, 404, 406, 407, 408, 409, 411 to 415, 418, 502, 549, 686, 687. See: U.S.C. Section 725a(v)(14).

Submerged Lands Act, 43 U.S.C. Sections 1301 to 1303, 1311 to 1315; See: 10 U.S.C. Sections 7421 to 7426, 7428 to 7438.

Watershed Protection and Flood Prevention Act, as amended, 16 U.S.C. Sections 1001 to 1005.

Wetlands Act of 1961, 16 U.S.C. Sections 715 k-3 to 715 k-5.

Wild and Scenic Rivers Act, as amended, 16 U.S.C. Sections 1271 to 1287.

Wilderness Act, 16 U.S.C. Sections 1131 to 1136.

department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency shall first consult with the United States Fish and Wildlife Service..."

With minor exceptions the requirement for consultation is all inclusive [10].

The Coordination Act exerts an important influence over onshore and nearshore development and over the exploration and production of oil and gas on offshore tracts. The most common types of development and potential environmental disturbances associated with this act are discussed at length in other volumes of this report.

The Service has developed a "Navigable Waters Handbook" composed of the formal guidelines governing its actions under the Coordination Act relating to permits in navigable waters, and an extensive field manual filled with practical examples and advice (Figures 4 and 5) [11]. Other FWS "Handbooks" have been prepared for Fossil Fuel Power Plants, Stream Channelization, Habitat Evaluation, and Downstream Flow Needs (under preparation, October 1977).

The Oil and Gas Exploration and Development Activities Guidelines of December 1, 1975, provide special guidance for OCS-related activities in territorial and inland navigable waters and wetlands.

Procedures for Corps of Engineers permits are covered by an inter-agency agreement, discussed in Section 3.3.1 (dredge and fill permits) [14]. The agreement outlines ways in which FWS objections are brought to the attention of the Corps, and the ways differences are resolved. Similar situations that may arise with other agencies are handled on a case by case basis with the exception of OCS lands management.

The Coordination Act process usually begins when the Service receives a notice of permit application or proposed Federal activity: the public's notice serves as notice to FWS.

When notice of a permit is received in a FWS field office, it is logged in the appropriate logbook (Section 10/404; NPDES, etc.). The file is then assigned to a field coordinator for further investigation. Some permits are evaluated or based on in-office maps and data. Others require field investigation. In some cases, the investigation is informally coordinated with state and other Federal organizations.

If environments may be endangered, permit or project sponsors are asked to provide detailed environmental studies when required. The

Figure 4. Illustration of Fish and Wildlife Service response to construction activities apparently requiring U.S. Army Corps of Engineers permits (Source: Navigable Waters Handbook, Reference 12).

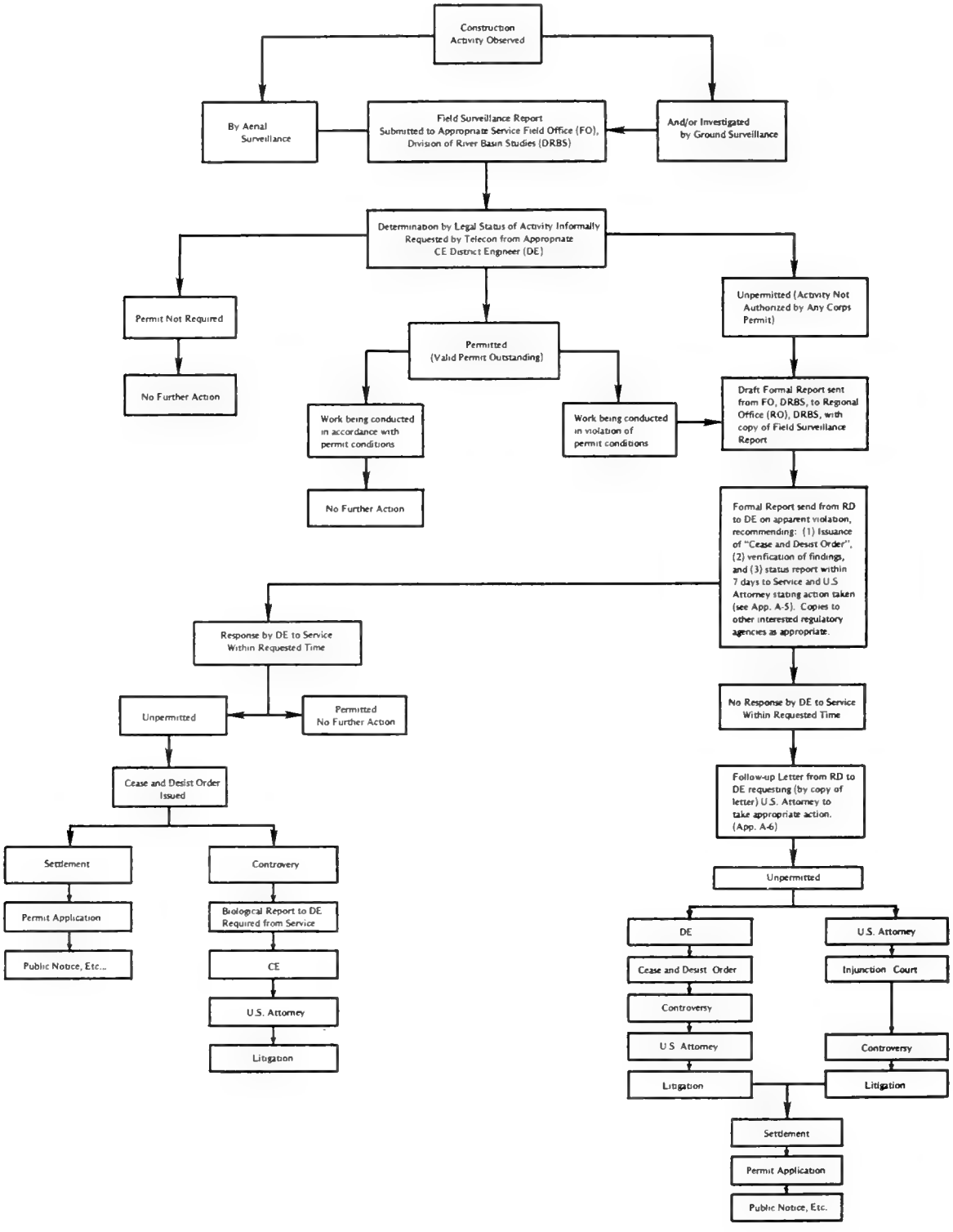
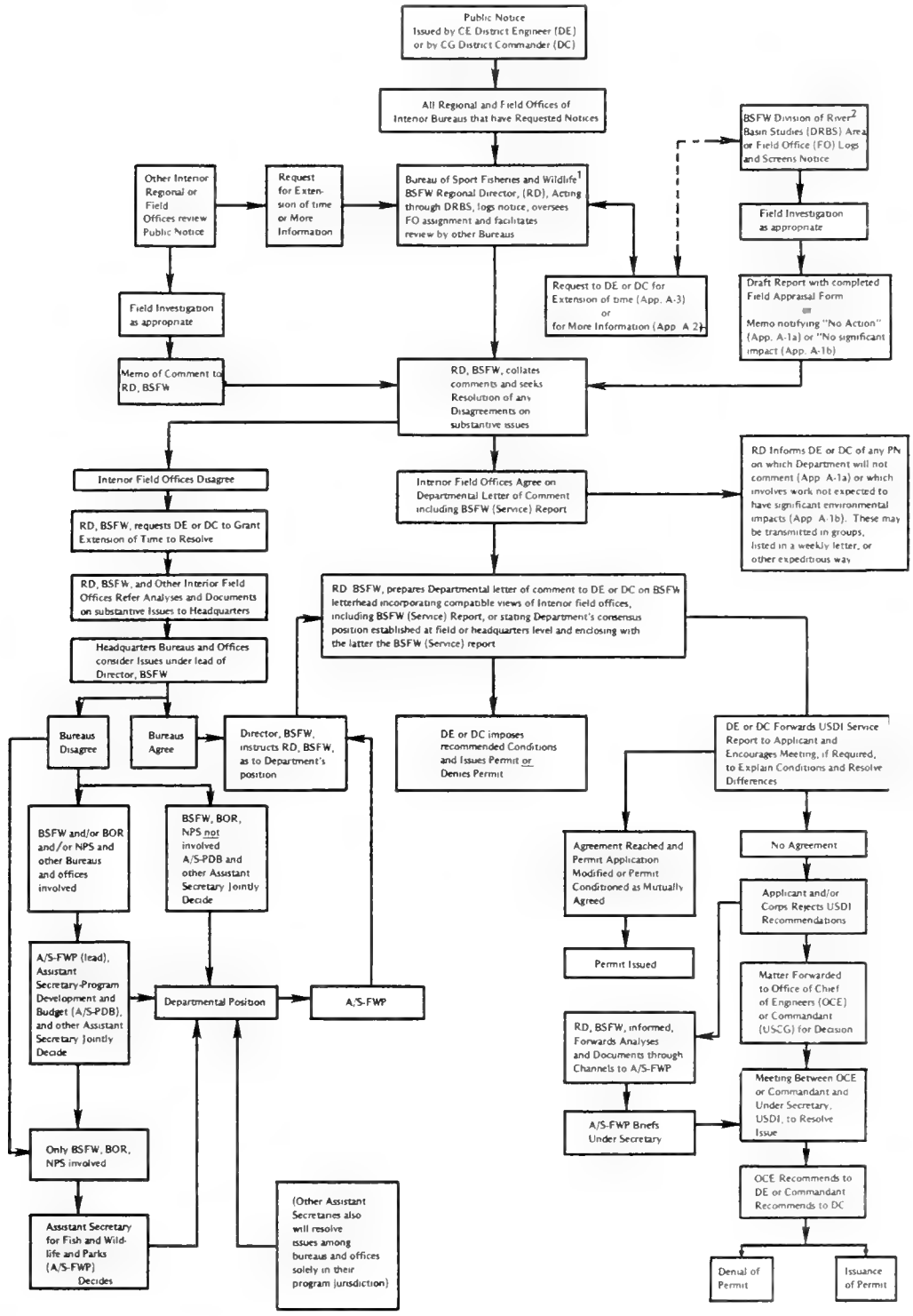


Figure 5. Illustration of Fish and Wildlife Service participation in the U.S. Army Corps of Engineers permit review procedures (Source: Navigable Waters Handbook, Reference 13).



[1]U.S. Fish and Wildlife Service
[2]Division of Ecological Services.

Service makes on-the-spot field observations but some analyses are based on outside information.

In the Annapolis,Maryland Field Office, permit coordinators classify permits into four categories based on in-house review as follows:

1. No objection
2. Field investigation needed
3. No action
4. Request for time extension

No objection means that the project apparently will not have any significant environmental impact; field investigation needed means that more information is necessary to determine potential impacts; no action means that some environmental impact is probable but monies are not available to make a final determination; consequently, the project is neither approved nor rejected; and request for time extension means that more information, studies, or time may be necessary before environmental decisions are made [15].

The Fish and Wildlife Service recommendations under the Coordination Act must be specific, describing "features recommended for wildlife conservation and development, lands to be utilized or acquired for such purposes, the results expected,...and the damage to wildlife attributable to the (proposed) project and the measures proposed for mitigating or compensating for these damages." [16].

Unlike the permitting agency, the FWS goal is assigned by law: the protection of public fish and wildlife resources and their habitat In this role it must present as completely documented a "case" for its position as is possible during the consultation called for under the Coordination Act.

1.2.2 The National Environmental Policy Act (NEPA)

The National Environmental Policy Act requires that the responsible Federal agency prepare a detailed statement (an "Environmental Impact Statement") to accompany major Federal actions significantly affecting the environment. The statements must describe [17]:

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Under NEPA, the permitting agency is usually the "lead" agency that prepares draft and final statements. This agency must consult with and obtain comments from any other Federal agency with jurisdiction or special expertise with respect to any environmental impacts involved [18].

NEPA has taken on great importance as a result of court decisions interpreting what a "significant" action is, and enforcing high content standards in the agency responsible for the statement [19]. An environmental impact statement provides information, and if the information is inadequate to meet the statutory standards (interpreted by various agency regulations) there may be delays while the statement is completed. The delays in the "Sale 40" OCS leasing procedures off the Northeastern coast have been the result of litigation challenging the adequacy of the EIS for this sale[20]. It also provides an important opportunity to fully implement and enforce related Federal and state environmental law and regulations[21]. Some legal authorities also argue that NEPA may change decision-making authority more in favor of environmental considerations [22].

The agency undertaking a program or permit decision must evaluate the proposed action to determine whether an EIS will be required. A decision not to prepare an EIS is called a "negative declaration." Decisions to prepare an EIS are announced publicly in the Federal Register [23].

Typically the draft EIS is available for comment for 90 days and other state and Federal agencies and the public may contribute comments from their areas of expertise. In some cases a public hearing is held. Often the basic statute authorizing the action requiring an EIS also requires a public hearing [24].

The courts require that comments be seriously considered by the lead or decisionmaking agency. Comments are incorporated in the final EIS which becomes a primary reference document in the final decision process. This process varies widely from agency to agency and program to program [25].

In a few cases, the agency may delegate preparation of the statement to applicant agencies with statewide jurisdiction (e.g., coastal zone management; state highway departments) [26].

Recent legislation has excluded some EPA programs (e.g., the Clean Air Act) and some special projects like the Trans-Alaska Pipeline from the NEPA impact statement requirements [27].

For the Fish and Wildlife Service, NEPA provides an opportunity to identify potential violations of other programs the Service monitors and enforces, such as the Endangered Species program, and to provide advice on the most desirable development alternative even when there is no specific statutory enforcement authority in FWS.

1.2.3 Secretarial Order 2974

A third vehicle for the intra-departmental coordination is Secretarial Order 2974. The order and supporting memoranda outline procedures for coordination of the OCS tract selection and sale process among the four principal Department of the Interior agencies: BLM, FWS, NPS, and USGS. It formalizes the planning and operating functions of the OCS Minerals Program by enabling BLM and USGS to obtain expert advice from each other and from the FWS and NPS with respect to environmental research and monitoring and operational activities associated with the OCS minerals program [28].

PART 2 -- OUTER CONTINENTAL SHELF OIL AND GAS

In the early 1950's the Congress resolved a running court battle over ownership of OCS lands between the states and the Federal government. Congress declared the Outer Continental Shelf to be Federal land in the Outer Continental Shelf Lands Act of 1953. The legislation was confirmed in the U.S. Supreme Court and the Federal government has since managed resource development on the Outer Continental Shelf [29]. The rules for development are spelled out in the Bureau of Land Management and USGS regulations, based on the Outer Continental Shelf Lands Act [30].

The Outer Continental Shelf leasing program differs from other coastal development management programs in which the FWS participates because the areas offered for leasing are under the exclusive jurisdiction of the Federal government. The program goals are orderly and timely development of oil and gas resources, environmental protection, and receipt of fair market value by the government. Only the Congress may set the rules that control these activities [30].

The negotiations for the sale of oil and gas resources and the procedures for bidding are open to public scrutiny, but the government, as owner, has substantial latitude in setting conditions for specific leases. It is through selection and evaluation of specific tracts and associated lease stipulations and operating conditions, that major environmental protection objectives are served.

The principal interested parties in the leasing, exploration and production process include the U.S. Department of the Interior agencies and industry representatives. Site-specific onshore impacts are difficult to predict at the leasing stage of the OCS development process, and though concerned public interest groups may represent particular towns or communities, they more often focus on broadened state-wide or regional environmental issues. State governments have asserted a strong interest in the methods, timing and procedures and environmental assessment for leasing, as well as the revenues that accrue to the government [32]. Federal agencies such as the U.S. Coast Guard and the U.S. Army Corps of Engineers also become involved in aspects of the process.

The following discussion provides the basic structure for this decision making process established by BLM and USGS. This structure, from the FWS perspective, rests upon the BLM-USGS regulations and Secretarial Order 2974. The elements to be reviewed are:

-- Federal program responsibilities
-- Lease tract selection

-- Environmental impact assessment
-- The departmental decision process
-- Lease sales
-- Post sale management
-- Environmental studies

The reorganization of energy related activities in the Federal government shifts some agency responsibilities, and in broad outlines, separates lease sales and management from environmental evaluation, leaving the latter in the Department of the Interior and moving sales and management to the new energy agency [33]. A draft of the current legislation is appended. Though no other reference to this proposal is made, it will have a significant effect on agency designations and on fine details of the leasing procedure as the reorganization plan is implemented.

2.1 FEDERAL PROGRAM RESPONSIBILITIES

The Bureau of Land Management (BLM), in the U.S. Department of the Interior, has primary responsibility for leasing Outer Continental Shelf lands for oil and gas recovery, with the U.S. Geological Survey (USGS) also in Interior, playing a corresponding role in the post-leasing phase, supervising exploration, offshore development and production. Both agencies work in close cooperation with the FWS to monitor potential impacts on fish and wildlife resources and habitats on the Outer Continental Shelf [34]. The FWS relies heavily on the OCS Coordinator in Washington, D.C., the National Coastal Ecosystems Team in Bay St. Louis, Mississippi, and Regional Activity Leaders in each of the regions where leasing evaluations are underway to represent FWS interests in the leasing process. Nearshore and onshore OCS permit activities are discussed in Part 3 of this report.

Regulations and procedures for leasing are prepared under the "umbrella" authority of the OCS Lands Act [35] which names the Secretary of the Interior as the agent with authority to lease OCS tracts for oil and gas development. Each agency involved in the process (BLM, USGS, NPS, FWS, COE, USCG, etc.) publishes its own regulations or procedures for internal agency operations [36]. FWS cooperative work with state Coastal Zone Management Programs may also exert an indirect influence on planning for OCS development [37].

Within the Department of the Interior, the key to these procedures is the Memorandum of Understanding of November 26, 1972 (revised January 19, 1977) among four key groups, BLM, USGS, NPS, FWS, supplemented by Secretarial Order 2974 [38]. The U.S. Department of the Interior has defined a complex system of cross references between the four agencies reflecting their different roles. USGS is generally concerned with optimal resource exploitation and associated operations; the FWS with fish, wildlife and habitat issues; NPS with antiquities and cultural factors; and BLM must weigh and interpret these interests and others (for instance, state coastal zone management programs) in the process of evaluating potential lease tracts and drawing lease stipulations.

The BLM supervised process leads to a Program Decision Option Document; lease conditions; and a lease sale (Figure 6, Table 3). In the post-leasing phase USGS monitors development through its Area Oil and Gas Supervisors, who may issue "orders" and notices to lessees affecting development and production operations for specific lease areas. Also, the lease agreements may be tailored to specific circumstances and may contain references to special development conditions called "stipulations."

In 1973 the government set as its target, six lease sales per year and BLM published a proposed OCS Planning Schedule which is used to determine the timing and initiation of individual sale procedures [41]. It is continually updated and revised within the Department of the Interior as conditions change.

We will look at four basic segments of the OCS leasing process: (1) tract selection (Steps 2-4); (2) environmental impact assessment (Step 6); (3) the Department of the Interior decision (Steps 5, and 7-10); and (4) post-sale management (Step 11). Environmental studies, which begin as early as tract selection, parallel the leasing process and satisfy two basic institutional objectives: (a) to provide information about the OCS environment that will enable DOI to make management decisions regarding OCS oil and gas development, and (b) to fill environmental information needs of other management, regulatory and advisory agencies [42].

2.2 LEASE TRACT SELECTION

After setting general priorities for Outer Continental Shelf leasing, the Federal government goes through a process to identify specific numbered tracts, each about 2304 hectares (5690 acres), which will be offered for exploration and development by industry (partial tracts may be offered). The first stage in the process is called "tract selection." Tract selection includes three steps:

- Preliminary tract evaluation;
- The "Call for Nominations";
- The official designations of tracts to be offered for lease.

This segment of the process is managed by BLM. The USGS, NPS, and FWS also have specific responsibilities for technical information assembled in the preliminary evaluation along with other Federal agencies, the states, and any others that may wish to comment (Table 4) [44]. Procedures have changed considerably to accommodate accelerated leasing. Past experience offers less guidance than usual in this process, as what was once a relatively leisurely process is becoming more formal and rigorously defined.

Figure 6. FWS participation in the OCS leasing process (Source: Reference 39).

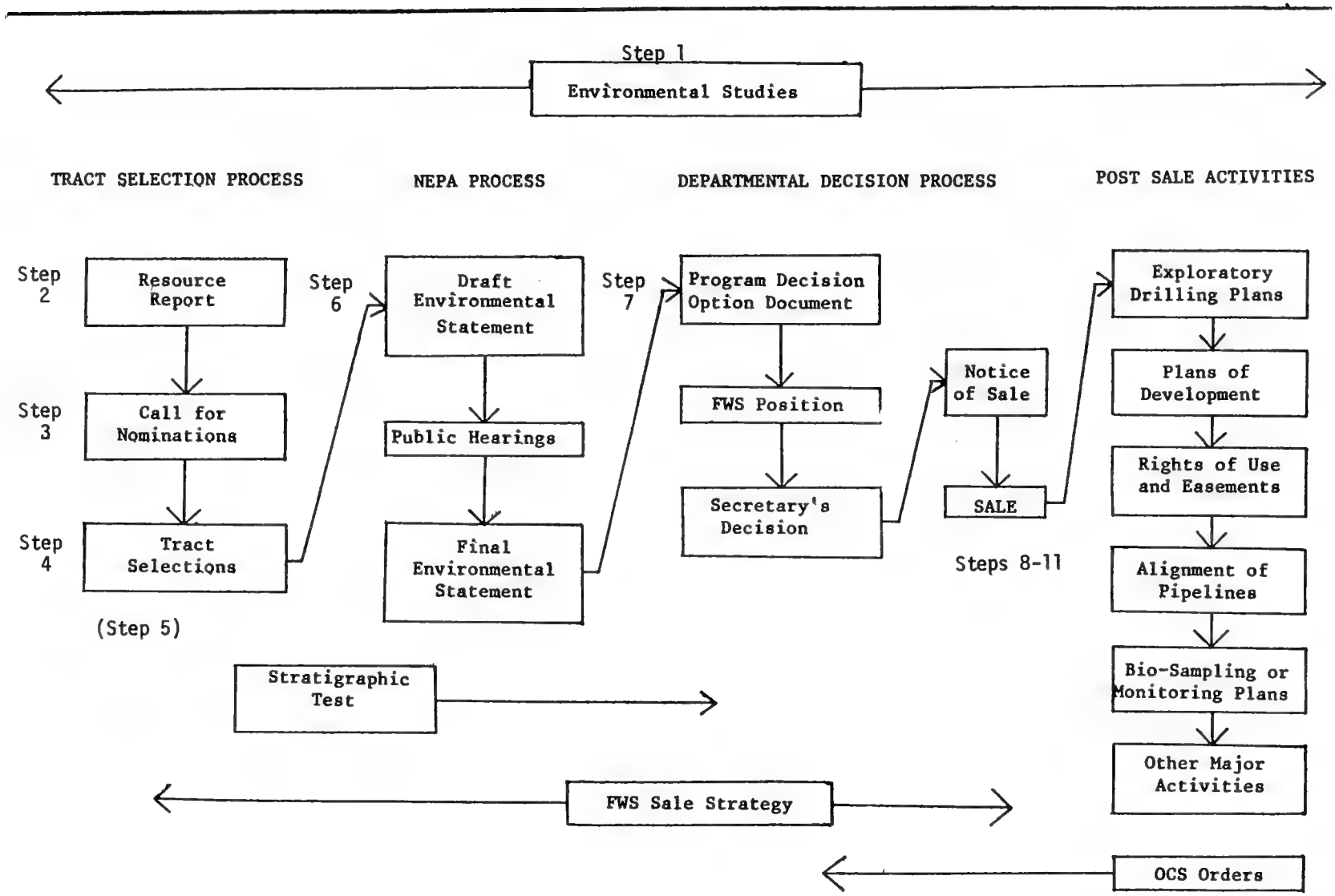


Table 3. Sequence of Events Leading from Initial Designation of OCS Area for Leasing to Post-Leasing Operation (Source: Reference 40)

Step 1	Environmental studies.
Step 2	Pre-nomination resource evaluation report.
Step 3	Issuance of a call for nominations to determine interest in broad offshore areas.
Step 4	Tract selection: (a) procedures pursuant to BLM-USGS agreement (b) public announcement
Step 5	Preliminary pre-sale evaluation.
Step 6	Preparation of an Environmental Impact Statement on those tracts to be offered: (a) draft statement (b) public hearing (c) final statement
Step 7	Department of Interior Decision Process: (a) program decision option document (PDOD) (b) publication of sale notice
Step 8	Final pre-sale evaluation to determine individual tract estimates of value.
Step 9	Sale by sealed competitive bid for each tract.
Step 10	Post-sale analysis: (a) evaluation (b) USGS recommendation to accept or reject each bid (c) BLM determination on a tract-by-tract basis of whether lease is to be issued
Step 11	Post-sale operations.

2.2.1 Preliminary Evaluation

The Bureau of Land Management specifically requests a "pre-nomination summary report" from USGS on the geology and potential mineral resources of a possible lease site approximately 90 days before the "Call for Nominations." Other Federal agencies are encouraged to outline their interests and concerns at this early stage and to submit resource reports on subjects within areas of expertise.

Fifteen agencies are routinely invited to contribute this sort of resource report. (See Table 4.) These can be key documents in the leasing process because they precede the formal call for nominations and EIS analysis.

Table 4. Lease Tract Selection Process. (Source: Reference 43)

Action	Respondents	Sequence
Resource Report	USGS (geology & minerals) FWS (fish, wildlife & habitat) National Park Service Bureau of Outdoor Recreation Bureau of Mines Bureau of Indian Affairs U.S. Forest Service National Oceanic and Atmospheric Administration National Marine Fisheries Service Environmental Protection Agency U.S. Coast Guard Federal Power Commission Federal Energy Administration Department of Defense Treasury Department	BLM request Approximately 90 days before call for nominations
Call for Nominations	Industry Public States Other Federal Agencies (see above)	
Tract Selection	Bureau of Land Management U.S. Geological Survey Fish and Wildlife Service National Park Service	Two field meetings preceed final selection meeting in Washington

The FWS may assemble an informal report on fish and wildlife resources for use in later phases of the leasing process whether or not a formal resource report is filed. These formal and informal resource reports become valuable tools for supporting nominations, for reviewing environmental impact statements, pinpointing resources needing extra protection through lease stipulations, developing FWS Program Decision Option Document (PDOD) strategies, and contributing to the PDOD [45].

The FWS resource report is prepared at the Regional level and submitted by the Regional Director to the OCS Coordinator (Table 5). The Regional Director designates the offices where the resource report source files are assembled. The Director of the Service transmits the report to the Bureau of Land Management. FWS tries to coordinate its field work with that of the Bureau of Land Management's OCS Field Office--Division of Environmental Assessment. This BLM office works with specialized information directly related to Fish and Wildlife Service interests [47].

Table 5. Fish and Wildlife Service Preparation of a Resource Report. (Source: Reference 46)

Step 1	As soon as a potential lease area is identified in the proposed OCS Planning Schedule, the FWS regional office begins assembling available data, reports and information which it might use in a resource report.
Step 2	The FWS prepares a descriptive report for the living resources of the area.
Step 3	Key environmental indicators are identified.
Step 4	A formal resource report is submitted to BLM.

The Fish and Wildlife Service has legal resource responsibility in the marine environment for birds and four species of marine mammals (the National Marine Fisheries Service in the Department of Commerce has legal responsibility for other living resources of the sea), but its authority in this review process is not restricted to these resources alone [48]. Its broader concerns are grounded in the Fish and Wildlife Coordination Act, NEPA, and its special knowledge of wildlife (all living things) and their habitats. As an Interior Department agency participating in the leasing process, it is the lead Federal biological resource agency with a direct input in the OCS leasing process [49].

BLM considers the FWS resource report along with the USGS evaluation of oil and gas resources and reports of other agencies prior to naming specific tracts to be included in the call for nominations [50].

2.2.2 Call for Nominations

The first tier "Call for Nominations" in 1974 formally opened this leasing process to the public [51]. Federal agencies, state, industry and the public were invited to submit general comments on OCS areas that might be offered. A second tier "Call" is issued for specific tract selection. Comments at this time may suggest that a tract be offered, or they may be "negative" and suggest tract exclusions.

The "Call" is used to gauge the level of interest in the potential sale areas. All points of view are important to the "Call". Because bid prices and financial evaluations will be affected, industry may mask its interests with over-inclusive nominations. For the Fish and Wildlife Service, the "Call" is primarily an opportunity to transmit new information to BLM and again signal concern for sensitive biological areas and resources. FWS may also recommend deletion of tracts within a sale area if environmental indications support the suggestions [52].

The FWS responds to the "Call" through the FWS OCS Coordinator. Recommendations that are forwarded to the Bureau of Land Management must be documented from the resource report and any subsequent environmental risk analysis [53]. This response originates in the Regional Office based on the resource report file including data generated after the resource report was written. The Director of FWS formally submits the documents to the Bureau of Land Management [54].

2.2.3 Tract Selection

Tract selection is initiated with two meetings between BLM, USGS, NPS, and FWS in the region adjoining the tracts being considered for leasing. At the end of these "field" meetings, BLM and USGS formulate a recommendation. The FWS Regional Director, or his representative, must attach a memorandum to the field recommendations, either agreeing or disagreeing with them. A copy of the memorandum is forwarded to the OCS Coordinator in Washington, D.C. [55].

Next, a final meeting to select specific sale tracts is held among these four agencies in Washington, D.C. In some cases, FWS is represented by members of the OCS Coordination staff, and when appropriate, by the OCS Regional Activity Leader who had participated in earlier field meetings with BLM. The level of representation at the second meeting depends in large part on the potential for resource conflict in the proposed tract offering. After BLM completes its decision, the FWS surnames the list of selected tracts which then goes to the Secretary of the Interior. (Surnaming does not necessarily indicate complete FWS concurrence in the selection.) If approved by the Secretary, the list becomes the "Notice of Tract Selection" and is published in the Federal Register [56].

2.3 ENVIRONMENTAL IMPACT STATEMENT

After tract selection, BLM prepares a draft Environmental Impact Statement (EIS) required by the National Environmental Policy Act (NEPA) [57]. It utilizes the information received during the Federal "in-house" evaluation, and the comments received during the "Call for Nominations." BLM must revise the draft EIS based on agency and public comments received during a review process. The revisions are incorporated in a final EIS. BLM follows strict time schedules in coordinating the EIS with public hearings and comment required by the OCS Lands Act and regulations [58]. (See Table 6)

The FWS reviews the draft EIS for a lease sale in the same Regional Office that participates in tract selection. The OCS Coordinator's staff checks these regional comments in the context of FWS policies and consolidates them with comments that may come from other divisions of FWS (e.g., Rare and Endangered Species, Wildlife Refuges, etc.). The Director then forwards the consolidated comments to BLM. These procedures are similar to EIS procedures for other types of Federal action requiring an impact statement [60].

The FWS participates in two related activities. First, BLM coordinates the results of public hearings with the draft EIS review. FWS representatives attend these hearings to review technical contributions and to advance FWS policy positions. When controversial issues are presented, both the OCS Coordinator and the Regional staff may attend.

Second, BLM may redraft lease stipulations based on comments and information from the EIS process [61]. The lease stipulation is the legal tool that controls individual lease operations and is an important factor in industry's evaluation of necessary environmental safeguards. The Bureau of Land Management is assisted by the USGS, NPS, and the FWS with USGS providing technical information from the physical sciences. The FWS plays a key role in this important process, representing the biological sciences under the procedures outlined in S.O. 2974.

2.4 DEPARTMENTAL DECISION PROCESS

BLM recommends which tracts to lease under existing law; the Secretary of the Interior acts on this recommendation. To aid in the decision process, BLM prepares a Program Decision Option Document (PDOD), which summarizes economic, social and physical resource issues not previously examined in the environmental impact statement, to assist the final decision. This 30-60 page Issue Paper serves as the primary decision document in lease sale offerings. The document draws on the information assembled by FWS, USGS and other agencies and on the EIS. Because the scope of environmental argument in the PDOD is limited, FWS contributions are usually tied to specific fish and wildlife resource problems, though they may range over other related issues [62].

Table 6. Preparation of an Environmental Impact Statement for OCS Leasing. (Source: Reference 59)

Step 1	BLM prepares a draft EIS describing: (a) proposed activity (b) environment (c) potential impacts (d) mitigating measures (e) unavoidable effects (f) relationship between short term uses and long range productivity (g) irreversible and irretrievable commitments of resources (h) coordination and consultation which took place in drafting the statement.
Step 2	The statement (draft EIS) is transmitted to the Council on Environmental Quality and made available to the public. FWS receives this draft for comment.
Step 3	A public hearing is held, usually between 30-60 days after completion of the Draft EIS. FWS comment through Secretary.
Step 4	A final EIS is prepared, reviewed by the U.S. Department of the Interior, and submitted to CEQ and made available to the public.
Step 5	No official action may be taken until 30 days have elapsed after BLM submits the final EIS to the Council on Environmental Quality. During this period other agencies have a final opportunity to comment on the proposed Lease Sale.

At this point, most of the agency environmental negotiations have occurred. The FWS works within a PDOD "strategy" which reflects its earlier resource report and EIS contributions. The OCS Coordinator works with BLM to make the specific points that the FWS would like to see included in the short PDOD document.

At this time, the FWS is also assisting in determining the need for mitigating measures for the initial test well which may be drilled by an industry consortium prior to leasing in a proposed sale area. The primary public management agent of the well, known as a COST (Coastal Offshore Stratigraphis Test) well, is the USGS Area Oil and Gas Supervisor. FWS comments at the regional level and review of the COST well results provide a practical exercise in defining environmental conditions or mitigating measures for later operations at this site [63].

U.S. Army Corps of Engineers and U.S. Coast Guard permits are also required for the COST well, but review criteria are limited solely to navigation issues. Although FWS receives notices of these permits, ordinarily the limited review criteria preclude substantial comment [64].

The other USGS contributions at this point in the decision process are revised tract evaluations and estimated values used later when bids are examined [65]. BLM has an "evaluation review team" that organizes this material and submits findings based on its opinion of data sources, price, discount factors and taxation methods used by USGS in its various value estimates [66].

2.5 LEASE SALES

Specific procedures, conditions and stipulations for each lease sale are set in the Public Notice of Sale by the manager of the regional BLM OCS Field Office, who is the analog of the USGS Area Oil and Gas Supervisor; see Section 2.6 [67]. Industry representatives compete by sealed bid for the tracts that are offered. The bidding formulas are limited by statute and typically leases are sold by cash bonus bid with a one-sixth fixed royalty [68].

The Department of the Interior may reject any or all bids. Any bid not accompanied by a check, money order or bank draft for 20 percent of the bonus offered is automatically rejected. BLM then compares properly submitted bids with the USGS final pre-sale evaluation of physical resources and tract values. Other factors also contribute to the analysis of bids prior to award. For instance, BLM may review the number of bids per tract; the competitive bidding performance of high bidders ranked by quartiles; and the average number of bids on all tracts on which high bidders bid [69].

Awards are announced by the Department of the Interior. Acceptable bids result in lease issuance after the balance of the bonus and the first year's royalties are paid [70].

Environmental factors are not a prime consideration in bid evaluations The protection of the environment is more heavily weighted in the earlier phases of the OCS leasing review. In post-sale analysis, new or additional environmental information may be introduced, but BLM places primary emphasi on development and production factors [71].

2.6 POST SALE MANAGEMENT

Once a lease is issued, BLM maintains the lease agreements, but the Geological Survey assumes supervision of lease operation. USGS requires approval for an exploratory drilling plan before allowing bottom exploration or exploratory drilling [72].

The USGS Area Oil and Gas Supervisor, part of the Conservation Division, U.S. Geological Survey, implements regulations governing lease operations [73]. Cooperative agreements between the Department of the Interior and coastal states bring the states and then the U.S. Army Corps of Engineers into this process. A stipulation indicating appropriate consideration of Corps and state interests must be filed with the Area Supervisor (along with lease exploration and development plans) to assure protection and conservation of aquatic life and compliance with state laws and regulations [74].

Industry operators furnish production reports to the USGS describing the volume of oil and gas production, sales, and all royalties due the government. Operators must also define operations, including new well completions or recompletions. These requirements are enforced through inspections during the first month after completion of a well and every 6 or 15 months thereafter, depending on the number of wells drilled from a platform [75].

Each USGS Area Oil and Gas Supervisor has the primary responsibility for appropriate environmental safeguards as a field is developed [76]. Though the U.S. Army Corps of Engineers and the U.S. Coast Guard require permits for offshore structures, review criteria exclude environmental considerations [77]. The key environmental safeguard in such a situation is the effective enforcement of lease stipulations, USGS operating "orders" or rules for a particular leasing area, and OCS guidelines and regulations [78].

Pipelines, tankers and barges are the principal transportation links between OCS oil and gas resources and onshore facilities. Both BLM and USGS have responsibilities for pipelines on the OCS. USGS must approve gathering lines (lines that run between production sites offshore) as part of its management of field development [79]. BLM grants rights-of-way from lease tracts to shore processing points [80]. However, USGS may grant rights-of-way if the lines cross only the lessee's tracts before reaching state waters. The Materials Transportation Bureau in the Department of Transportation sets design criteria for safety [81]. The

Federal Power Commission also reviews design and the economics of interstate gas pipelines (it also sets the wellhead price for OCS gas) [82]. The U.S. Army Corps of Engineers manages the permit program that controls dredging and dredge spoil disposal associated with pipelines [83]. These programs are discussed in Part 3 of this report.

In addition to permits for the pipeline facilities required for on and off loading of tankers, tanker and larger operations are supervised by the Federal Maritime Commission which determines whether a shipper is financially responsible in view of potential liability for pollution or other damages resulting from his operations. Tanker and barge operations are also supervised by the Coast Guard [84].

FWS often comments on these permits under the Fish and Wildlife Coordination Act and/or NEPA.

2.7 ENVIRONMENTAL STUDIES

The Bureau of Land Management began a program of environmental studies associated with its OCS leasing program in 1974. Initiated to respond to specific information demands imposed by NEPA legislation on the BLM decision process, the Environmental Studies Program now provides environmental information of both pre- and post-leasing decisions as illustrated in Figure 7.

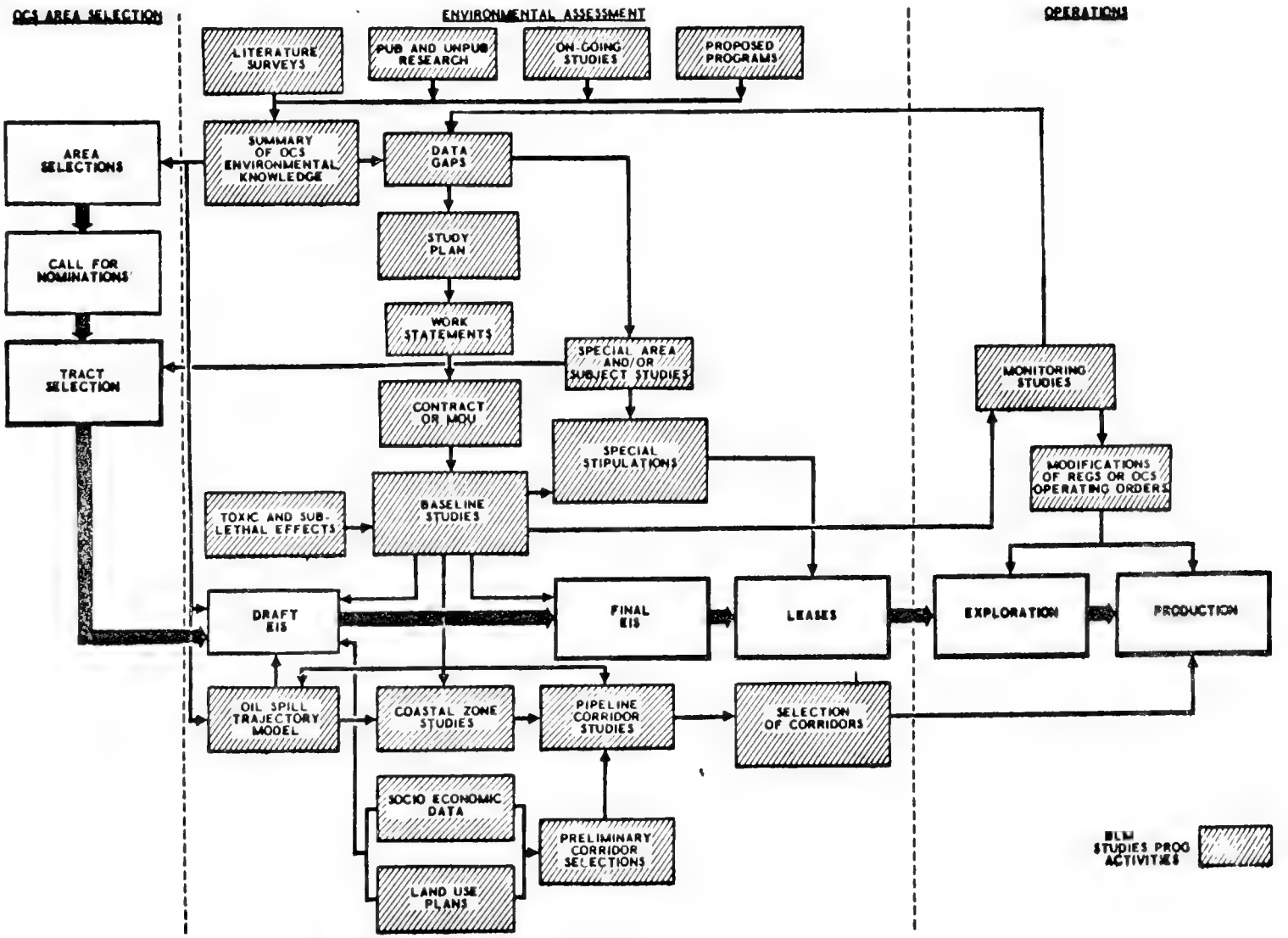
The Environmental Studies Program is principally funded and coordinated by BLM and is implemented by various research organizations and Federal agencies with marine environmental research capabilities. It is monitored by an Outer Continental Shelf Environmental Studies Advisory Committee with representatives of the coastal states, private sector and ex-officio members from EPA, NOAA, USGS, and FWS [86].

The FWS participates in the BLM-OCS environmental studies program in three ways. First, Service staff attend regional conferences sponsored by BLM prior to preparing its study plan schedule. Other major participants in past conferences have been the private sector, universities, and state agencies concerned with the regional impacts of OCS development. Recommendations for specific studies are published in the conference proceedings.

The Chief, Office of Biological Services, or his alternate represents the Service and actively participates in the functions of the Advisory Committee. The Committee meets quarterly in full session, but subcommittees also undertake specific tasks assigned by the Chairman.

Second, Secretarial Order 2974, coordinating the activities of FWS, BLM, NPS, and USGS, provides a mechanism for FWS involvement. Under this Order, BLM consults with FWS in designing the biological program study elements, before allocation of funds, and in determining the level of natural resource study efforts. The agencies also have outlined their

Figure 7. Relationship of Bureau of Land Management environmental studies program to OCS minerals development (Source: Reference 85).



mutual responsibilities in the actual performance and management of environmental studies [87].

Third, the Service may participate with BLM as a member of the OCS Technical Proposal Evaluation Committee and monitor study elements of particular interest.

The Service has pressed for environmental studies that generate comprehensive study of nearshore and onshore coastal ecosystems that may be affected by OCS development [88]. A second principal concern is inventories of seabirds. Special studies designed to determine impacts of development activities also may be incorporated as part of the OCS environmental studies program. For instance, experiments may establish cause and effect relationships as well as the toxicity of contaminants and allow development of mitigating procedures. The FWS has suggested studies to develop methods for dispersing waterbirds from oil spill sites, moderate impacts of dredging and turbidity on submerged sea grass beds, and evaluate the chronic effects of sublethal levels of petroleum hydrocarbons on marine birds [89].

3. ONSHORE AND NEARSHORE DEVELOPMENT MANAGEMENT

The tract selection and leasing program of the Department of the Interior precedes or parallels site selection and development for related onshore support and processing facilities. Full OCS development requires numerous types of facilities, including supply bases, platform fabrication, pipeline facilities and landfalls and refining works onshore or in nearshore waters (Table 7) [91]. Industry locates these facilities subject to a web of local, state and Federal regulatory authorities.

Onshore site selection, purchase and development affect easily identifiable economic and environmental interests in particular communities along the coastline. Unlike the Federal lands of the OCS, nearshore development management includes private land owners and state and local government interests. The onshore resources of greatest concern to the FWS and state natural resource agencies may not be federally owned and this introduces considerations in the regulatory review process under the Coordination Act and NEPA that differ from offshore lease decisions (see Section 1.3).

3.1 FEDERAL ROLES IN MANAGEMENT

Federal regulatory authority varies between nearshore and onshore coastal areas. A Common Law concept called the navigation servitude supports Federal authority in coastal waters. It has been amplified in statutes. Statutes may also define management programs for other areas based on additional Federal powers. These are generally based on the Commerce Clause of the U.S. Constitution. In some situations, Federal law may preempt local regulation, but more typically both operate concurrently [92]. The primary role of the FWS is that of advisor to other agencies for its specific wildlife and habitat interests.

3.1.1 Navigation Servitude

Coastal waters affected by the navigation servitude are subject to a paramount Federal interest. The navigation servitude is a property interest somewhat like an easement, and is related to inundation by tidal waters and to water-born commerce. In coastal areas it generally exists seaward of the line of mean high tide to the limits of Federal authority over the OCS [93]. Federal dredge and fill permits under Section 10 of the Rivers and Harbors Act of 1899 are based directly on this concept [94]. Where the servitude exists, the Federal agencies have a right to exercise their permitting powers to protect navigation and the environment, even when competing private interests in the property also exist [95].

Table 7. Example of Federal Permit Reviews and Issuances for Different Oil and Gas Development Activities

Development \ Federal Regulations	COE/Discharge Dredge and Fill Material	COE/Other	EPA/404	EPA/NPDES	EPA/208	EPA/309	EPA/Other	BLM/Right-of-Way	BLM/Other	USGS/Right-of-Way	USGS/Other	USCG/Bridges and Structures	USCG/Deepwater Ports	USCG/Other	FWS/Coordination Act	FWS/NEPA	FWS/Endangered Species	DOT/Pipelines	DOT/Other	FPC/Gas Pipelines and LNG Processing (Interstate)	CEQ/NEPA
Service Bases	P		P/A									A		A	A						A
Marine Repair and Maintenance	P		P/A									A		P	A	A					A
General Shore Support																					A
Platform Fabrication	P	P	P/A									A/P		A/P	A	A					A
Pipecoating Yards	P		P/A													A		A	A	A	A
Oil Storage				P	A									P		A					A
Processing and Manufacturing				P	A		P									A					A
Refineries				P	A		P							P		A		A	A		A
Petrochemical Industries				P	A		P							P		A					A
Gas Processing																				P	
LNG Processing																					
Pipelines	P		P/A					P		P						A		P	A	P	A
Offshore Mooring	P			P				P		P		P	P	P		A		P	A		A
Tanker Operations														P					P		

P = Permit
A = Advise and comment
Permit requirements may be mutually exclusive

The restriction, and the water-born commerce notion it is tied to date back to the days when interstate commerce included fur trappers in canoes. A broad definition has evolved that reaches some adjacent wetlands [96]. The broad definition is due in part to the variety of objectives the servitude serves in addition to the protection of commercial shipping [97].

In "navigable waters" where the navigation servitude does not exist in its traditional form (because the statutory definition exceeds the limits of the servitude) the Federal Water Pollution Control Act Amendments of 1972, PL 92-500, require some types of permits for activities which pollute the waters of the United States, based on what is called the "Commerce Clause" of the U.S. Constitution [98]. Considerable controversy has been generated over the exact limits of this authority and its relationship to the navigation servitude (see Appendix A).

A state's regulatory authorities are based on analogous legal concepts and state constitutional provisions [99]. Unless the Congress explicitly declares an exclusive Federal interest, both state and Federal regulations have equal validity [100]. The result has been referred to as the "multiple veto," over state coastal waters and shorelands since neither government can override the other. Federal regulations often require state planning and permitting decisions to be completed before consideration of Federal permit applications. Of particular importance is the Coastal Zone Management Act of 1972 which provides for a referral process in which Federal actions are reviewed for consistency with approved State Coastal Zone Management Programs under the guidance of the Office of Coastal Zone Management in the Department of Commerce [101]. Others are being developed for specific permit areas, such as dredge and fill (see Section 3.3.1).

3.1.2 Reasonable Regulation

Critics of government regulations frequently argue that procedures operate unfairly in particular cases. Fairness translated into legal doctrine is called "due process" [102]. In most general terms, it requires a process including a public, plausible and factually documented explanation when otherwise similar situations are treated differently under a particular regulation. It also places outer boundaries on the ways in which government action may affect private property.

The most commonly cited element of this argument is the "taking issue." A landowner whose land is slated for expropriation for a recreation area or public refuge is protected by the due process "taking" provisions of the U.S. Constitution. Procedures are watched closely by state and Federal Courts. Acquisition must be for a legitimate public purpose, and the government must provide "just compensation," usually defined as fair market value of the property excluding any influence from the proposed public improvements. There are no exceptions to this rule [103].

However, some of the objectives served by public acquisition--for example protection of endangered species, water quality, and wetlands function--also may be legitimate objectives of regulatory permit programs such as the permit program for the discharge of dredged and fill material. A regulation of this type may substantially restrict the use of land, without any provision for compensation, and still meet the requirements of due process. This problem has been referred to as the "taking issue" [104].

Assuming the program serves a valid purpose, there are two general elements in evaluating a taking claim:

1. if the regulation applies to private land where there is no competing formal public interest (e.g., the navigation servitude), the regulation must not deny "all practical use" of the property. The interpretation of this standard varies from state to state and may still result in severe restrictions on dredging and filling of low-lying properties.

2. if there is an appropriate competing formal public interest (e.g., the navigation servitude), the regulation may prohibit any modification of the natural system providing it is not arbitrary and serves properly documented public objectives.

Appendix A provides a more detailed discussion of this issue.

3.1.3 State and Local Roles

OCS-related development projects often require large sites, and outside of a few industrially developed areas, these sites are unlikely to have appropriate local zoning and services before their selection. Both zoning use designation and public services such as water and sewer usually require the approval and support of local government before a project may reasonably proceed. Typically a developer will require some assurances of both before finally acquiring a site. Often acquisition is contingent upon proper local approvals, and the price paid reflects expected development values.

Flood protection conditions generate the most widespread special building standards for coastal development. These are implemented by local governments pursuant to Federal standards to enable the Federal Insurance Administration to issue flood insurance. They impact residential construction most significantly, but they impose floodproofing requirements on other types of flood-prone development as well [105].

State natural resource programs also work with the Fish and Wildlife Service, both cooperatively and through grant programs. These activities often include support for specialized Federal programs such as the Endangered Species Program, directly contributing to the advise and

comment role the Service plays in Federal permit review [106]. A State Coastal Zone Management Program may also add significant controls on coastal development [107].

Appendix B provides an overview of land use management programs typically provided by state and local government.

3.2 ACCESS TO DECISIONS THROUGH FWCA-NEPA COMMENT: PERMITTING AND LICENSING PROGRAMS FOR OCS-RELATED ONSHORE AND NEARSHORE DEVELOPMENT

Federal regulatory programs affect both places and activities involved in siting OCS-related onshore and nearshore development. The most pervasive place-related program is the permit program for the discharg of dredged or fill material in the waters of the United States. Other place-related programs, important in some geographic areas, include those responsible for protecting endangered species habitats, marine and estuarir sanctuaries and certain watersheds.

In some cases, the place-related regulations only reach certain categories of activities. For example, the FWS has a responsibility to protect endangered species habitats,but in practice, this responsibility primarily affects activities by Federal agencies or under Federal permit or license because NEPA and the Coordination Act provide a link between the place related interest and these types of activities.

Activities of the oil and gas industry are also regulated by the Federal Government. Pipelines must meet federal safety standards (interstate gas pipelines must also comply with other regulations relating to gas prices and operations). Special Federal legislation addresses deepwater port development. Activities that generate new sources of water and air pollution are subject to federally supervised regulatory programs. Tanker operations are increasingly subject to Federal standards and surveillance.

Short summaries of the principal programs that affect OCS-related nearshore and onshore development follow. These requirements generally are cumulative. Table 7 relates these program descriptions to the fourteen development types described in detail in other reports in this series.

The NEPA and/or the Coordination Act review process gives the FWS access to these programs in an advisory role to express fish and wildlife and habitat issues whenever an environmental impact statement is required, or when the activity takes place in the navigable waters of the United States. The Coastal Zone Management Program, guided by the Office of Coastal Zone Management in the Department of Commerce, also provides extensive opportunities for advice and comment relating to state-federal interests in the coastal zone.

3.3 PLACE RELATED FEDERAL DEVELOPMENT MANAGEMENT PROGRAMS

Overlapping "jurisdiction" or authority over places is a constant challenge to permit applicants, because the matrix of places and activities subject to government control is particularly complex in the coastal zone. We refer to this problem as place related because physical boundaries can usually be defined based on either political jurisdictions (cities, counties, etc.) or natural factors (salinity, tidal reach, etc.). In the following summaries, we will highlight the principal Federal coastal programs. In most cases there will be one or sometimes several state analogs to the Federal program.

3.3.1 Permits for the Discharge or Disposal of Dredged and Fill Material in the Waters of the United States

The U.S. Army Corps of Engineers administers a Federal program of permits for the discharge or disposal of dredged and fill material in the waters of the United States. Regulations for the program have been developed in partnership with EPA which shares statutory authority with the Corps [108]. The program influences both private development and construction by other public agents.

Jurisdiction

Corps permit requirements stem from the Rivers and Harbors Act of 1899 and Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500) and their implementing regulations [109]. "Navigable waters" are defined differently in the two acts. As interpreted by Court rulings, under Section 404, they reach both tidal and certain freshwater wetlands [110]. Section 10 of the Rivers and Harbors Act reaches only certain tidal wetlands (particularly lower wetlands). Because of these differences Section 404 is the primary authority for permit requirements in nontidal wetlands. In areas of overlapping jurisdiction to the traditional 3-mile limit, programs under both acts are jointly administered.

The Corps and EPA agreed to new regulations extending the permit area beyond the bounds of the traditional navigation servitude in July 1975, revised July 19, 1977. The regulations implement the recent court rulings that ordered the Corps to change its regulations to encompass the broader Section 404 definition. The extension of the permit area was accomplished in three phases ending July 1, 1977 [111].

"Phase I" permits are required for activities in "coastal waters and coastal wetlands contiguous thereto" [112]. This continues earlier Section 10 jurisdiction with a clarification of the definition of "contiguous wetlands" by eliminating ordinary high water mark and mean high water mark distinctions, which courts had sometimes included in the earlier definitions under more complex legal doctrines [113]. Phase II extends this permit area to "primary tributaries, fresh water wetlands

contiguous or adjacent to primary tributaries, and lakes" [114]. Phase III jurisdiction extends to all of the waters of the United States, with numerous exceptions relating to agriculture, ranching, silviculture, amount of waterflow in a stream, special provisions for simplified procedures in states with approved state coastal zone management plans, and other special cases [115].

The 1977 revisions to the Corps regulations follow this pattern, but with simplified terminology. "Navigable waters" is used to refer to waters subject to Section 10 jurisdiction. "Waters of the United States" is used to refer to navigable waters plus those additional areas subject to Section 404 jurisdiction. The waters of the United States are broken into four categories [116]:

> Category 1
>
> Coastal and inland waters, lakes, rivers, and streams that are navigable waters of the United States, including adjacent wetlands.
>
> Category 2
>
> Tributaries to navigable waters of the United States, including adjacent wetlands (manmade nontidal drainage and irrigation ditches excavated on dry land are not considered waters of the United States under this definition).
>
> Category 3
>
> I tate waters and their tributaries, including adjacent wetlands.
>
> Category 4
>
> ll other waters of the United States...such as isolated wetlands and lakes, intermittent streams, prairie potholes, and other waters that are not a part of a tributary system to interstate waters or to navigable waters of the United States, the degradation or destruction of which could affect interstate commerce.

These general categories are more specifically defined where distinctions are relevant, such as when Section 10 review criteria and Section 404 permit review criteria could result in different permit conditions.

Permit Procedures

The revised Corps regulations treat permit procedures in two steps. They first review general policy and procedural considerations (Table 8), both for the program as a whole, and then for the specific authorities encompassed in the program [118]:

Table 8. General Regulatory Policies of the Corps of Engineers (Source: Reference 117)

- Public Interest Review. A process weighing conservation, economics, aesthetics, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use, navigation, recreation, water supply, water quality, energy needs, safety, food production, and, in general, the needs and welfare of the people. Four criteria are applied to any proposal covered by the program:

  -- the relative public and private need

  -- the desirability of using appropriate alternative locations and methods

  -- the extent and permanence of the beneficial and/or detrimental effects on public and private uses to which the area is suited

  -- the probable impact of the single proposal in relation to the cumulative effect of existing and anticipated work or structures in the area

- Effect on wetlands. Particular emphasis is given to cumulative effects on wetlands. The Fish and Wildlife Service plays a special role in reviews of particular wetland areas along with NMFS, NOAA, EPA and the SCS.

- Fish and Wildlife. The Fish and Wildlife Coordination Act defines the Fish and Wildlife Service advisory role under this program. Applicants are advised that they will be urged to modify proposals to eliminate or mitigate consequences identified by the Service.

- Water Quality. The Environmental Protection Agency authorities set a number of conditions which must be certified by EPA before the Corps will approve an application under this program.

- Historic, Scenic and Recreational Sites. A number of authorities require special consideration of specific resources in these categories.

- Effect on Limits of the Territorial Sea. This consideration relates to baseline measurements that determine respective state, federal and foreign interests in the seas and seabed.

Table 8, continued

- o Interference with Adjacent Properties or Water Resource Projects. This consideration relates primarily to up and downstream effects of protective work, and other nuisance effects of work on other public and private rights.

- o Activities Affecting Coastal Zones. Approved State Coastal Zone Management Programs may include a procedure for advice and comment on Corps permits.

- o Activities in Marine Sanctuaries. Certification by the Secretary of Commerce is required before permit approval in Marine Sanctuary areas.

- o Effect on Floodplains. Pursuant to Executive Order 11988, May 24, 1977, the Corps must consider impacts on flood losses and safety of individuals and the natural and beneficial values of floodplains in reviewing permits under this program.

1. Permits for dams and dikes in navigable waters of the United States. (Section 9 of the Rivers and Harbors Act of 1899)

2. Permits for structures or work in or affecting navigable waters of the United States. (Section 10 of the Rivers and Harbors Act of 1899) (Table 9)

3. Permits for discharges of dredged or fill materials into the waters of the United States. (Section 404 of the Federal Water Pollution Control Act Amendments of 1972) (Table 10)

4. Permits for ocean dumping of dredged materials. (Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972)

These sections review the activities affected by the particular authority, when a permit application is required, the information required by the Corps in a permit application, and the general criteria on which decisions are based. Because the authorities overlap a great deal these sections attempt to sort out considerations common to all provisions and specific additional points for each special authority. The requirements are cumulative.

All permits are issued through a consolidated review process. Under these four sets of authority, the Corps issues four types of permits [121]:

1. Nationwide Permits

2. General Permits

3. Individual Permits

4. Letter of Permission

Nationwide permits are issued in conjunction with the publication of the regulations for the Corps permitting program. Individual permit applications are not required for work authorized by nationwide permits, principally work or structures with negligible impacts on the environment. These permits contain basic conditions which must be respected in completing the work or structures.

Nationwide permits only authorize Discharges of Dredged and Fill Material (Section 404) into certain Category 4 waters. The standards for a nationwide permit are developed in coordination with EPA and the Fish and Wildlife Service. The District Engineer may require individual permits based on the public interest in specific areas by notifying owners or operators in those areas that individual permits will be required.

Table 9. Jurisdiction and Policies for Permits for Structures or Work In or Affecting Navigable Waters of the United States (Source: Reference 119)

Jurisdiction

- Permits are required for all structures or work in or affecting navigable waters of the United States (Category 1) or on the Outer Continental Shelf.

Policies

- A national permit is authorized for:
  - -- aids to navigation placed by the USCG
  - -- structures in artificial canals associated with primarily residential development, where the connection of the canal to a navigable water of the United States has been previously authorized
  - -- the repair or rehabilitation of a previously authorized structure where the structure is presently serviceable and repairs conform to the previously authorized plans, for uses specified in the previous authorization
  - -- marine harvesting devices that do not interfere with navigation
  - -- staff gauges, water recording and testing devices and the like that do not interfere with navigation
  - -- survey activities including core sampling
  - -- structures or work completed prior to 18 December 1968 or in water bodies where the District Engineer has not asserted jurisdiction, provided there is no interference with navigation
- General permits may be issued for clearly defined categories of structures or work. After a general permit is issued, individual activities or work within the permit category will not require individual processing unless the District Engineer finds this is necessary on a case-by-case basis. General permit conditions and selection criteria are defined in part in the Corps regulations.

- Structures or work by private parties required by related Federal dredging or other work or structures, may be considered in planning for the Federal work and, to the maximum extent feasible, authorized in coordination with the Federal work or structure.

- Authorization for dredging a channel, slip, or other such navigation project will authorize maintenance dredging, subject to revalidation at regular intervals.

- Applications by riparian owners for structures for small boats will be favored when consistent with navigation, in the absence of an overriding public interest.

- Applications for aids to navigation are coordinated with the USCG.

- Applications for structures and artificial islands on the OCS are evaluated solely for impact on navigation and national security; total environmental impact is evaluated in the U.S. Department of the Interior leasing process.

- Canals and similar artificial waterways require a permit if they constitute a navigable water of the United States or if they are connected to a navigable water of the United States in a way that affects its course, condition or capacity.

Table 10. Jurisdiction and Policies for Permits for Discharges of Dredged or Fill Materials into Waters of the United States (Source: Reference 120)

Jurisdiction

- Permits are required for the discharge of dredged or fill materials into waters of the United States (Categories 1-4).

Policies

A national permit[a] is authorized for:

- Discharges prior to the effective dates of phasing (see text), some subject to general conditions.

A national permit[a] subject to specific conditions is authorized for:

- A discharge into Category 4 waters (isolated lakes, wetlands, intermittent streams, etc.), except isolated lakes of over 10 acres.

A national permit[a] subject to specific conditions is authorized for:

- Specific categories of discharges:
  - -- utility line crossing bedding or backfill;
  - -- bank stabilization less than 500 feet in length;
  - -- minor road crossings;
  - -- fill incidental to the construction of bridge structures (not approaches);
  - -- repair or replacement of previously authorized, currently serviceable fill.
- Permits are reviewed by EPA prior to issuance in a "coordination" process to respect the joint authority of the Corps and EPA for this aspect of the permitting program.

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[a]Individual permits may be required within the discretion of the District Engineer.

General permits are issued for clearly described categories of structures or work after reviewing all applicable policies of the different authorities. Piers and docks, and other types of structures and works described in the special policies for Structures or Work in or Affecting Navigable Waters of the United States are the typical subjects of a general permit. The general and Section 404 discharge permit policies also apply in the Corps permit review and EPA and FWS "coordination" process [122].

Individual permits are issued to authorize specific structures or work under any of the four sets of authorities after notice, opportunity for a hearing and EPA and FWS "coordination" or consultation [123].

Letters of Permission are issued for minor structures or work not subject to the special policies of the Discharges of Dredged or Fill Material (Section 404) section of the regulations. These will generally be minor structures--docks, etc.

There is no public notice for a letter of permission, but the EPA and FWS coordination procedures are followed before issuing the letter [124].

The Corps' permit decisions are highly decentralized. Its eleven Division Engineers and 36 District Engineers have substantial autonomy in the permit process. Applications are processed by the District Engineer, and if they are noncontroversial and meet the Corps standards, the District Engineer may issue a permit. The majority of applications fall into this category (Table 11).

Timing of the application procedures depends in part on whether an EIS or public hearing is required and in part on other public and state and Federal agency comment. In general, public notice is issued within 15 days of receipt of a complete application containing all required information. Public comments are normally received for 30 days after the publication of the notice, and in exceptional cases, for up to 75 days. An environmental assessment is also required for all permit applications to assist in determining whether an EIS will be required. The environmental assessment is prepared at the district level by the Engineering Section within approximately 90 days of permit application.

Five different situations may result. The permit is denied or issued in draft form within 30 days of the last occurring event among the following [126]:

1. Closing of the public notice comment period with no objections received.

2. Receipt of notice of withdrawal of objections.

3. Completion of "coordination" following applicant's rebuttal of objections.

Table 11. Steps for Issuance of Dredge and Fill Permits (U.S. Army Corps of Engineers). (Source: Reference 125)

Step 1:	The applicant submits project drawings and related information to the Corps District Engineer. The District Engineer may later require additional submissions to aid in environmental assessment or the preparation of an Environmental Impact Statement.
Step 2:	The District Engineer sends a public notice of the proposed work (except for letters of permission) to various interested parties, including adjacent property owners, state, local and federal agencies, local Senators and Congressmen, and any other individuals who have requested notices from that District. The "coordination" or consultation process with FWS and EPA is initiated.
Step 3:	Comments received from this process are assembled and received by the District Engineer. He may share unfavorable comments with the applicant and encourage him to work out differences with others. Comments may also reveal issues that require an Environmental Impact Statement, if none had been required prior to the comment period.
	and/or
	A Draft EIS statement is prepared and offered for comment.
Step 4:	The District Engineer holds a public hearing if one is requested or required by the District Engineer; none is held if the District Engineer finds there is no substantial issue.
Step 5:	The permit application is evaluated by the Corps according to general policies and applicable specific policies. "Coordination" comments are considered.
Step 6:	The permit decision is made by the appropriate office of the Corps: District, Division or Washington.

4. Closing of the record of a public hearing.

5. Expiration of the 30 day waiting period following the filing of the final EIS.

The Corps permit program provides for concurrent processing of permit applications with other Federal, state and/or local authorizations or certifications. If other authorizations or certifications are not received, the Corps permit is denied without prejudice--an applicant may reinstate his application when the appropriate approval is received. The Corps solicits the views of the Governor to reconcile conflicting requirements or policy statements from within a state. Failure to comment or take action by any state or Federal agency within three months of public notice is treated as no objection to continued Corps processing of the permit application. As a part of concurrent processing, in those states with ongoing permit programs governing activities similar to activities regulated by the Corps program, the District Engineer may enter into formal joint processing agreements [127].

The District Engineer is primarily responsible for determining whether an Environmental Impact Statement (EIS) is required based on an environmental assessment, or comments or other information received after public notice or the "coordination" process. When an EIS will be prepared, the District Engineer may invite comment on factors or issues which should be addressed in the draft EIS. After the draft EIS is prepared, a public notice of its availability is issued, summarizing the principal arguments of the draft EIS. A public hearing may be held after circulating the notice and the draft EIS [128]

Public hearings are favored for Section 404 Dredge and Fill and Ocean Dumping and other Federal project permits. If a hearing is requested by any person (or agency) after public notice, the District Engineer must schedule a hearing unless he finds there is no substantial issue or valid interest for consideration. Section 9 and 10 permit applications will be considered at a public hearing if the District Engineer receives a written request and finds there is sufficient public interest to warrant a hearing [129].

In some cases, objections from states via the Governor, from other Federal agencies, or from the public may cause the Division Engineer to review the application. In these cases, he assumes primary responsibility for the decision, directing the District Engineer to grant or deny a permit. A decision by the Division Engineer occurred in fewer than one hundred cases, out of some 15,000 permits granted by the Corps in 1975 [130].

Interagency "Coordination" or Consultation and Comment

Comments from certain Federal agencies have special status in permit proceedings, either by statute (EPA) or by statute and agreement between agencies (FWS). Under the Fish and Wildlife Coordination Act and NEPA, the

FWS reviews all the Corps' permit applications and may recommend conditions to reduce or mitigate impacts on fish and wildlife and their habitat and related public natural resources [131]. Most permits with conditions satisfactory to both FWS and the Corps are established at the district or division level.

FWS procedures are outlined in The Navigable Waters Handbook and special guidelines for Oil and Gas Exploration and Development Activities reproduced in part in the Federal Register, December 1, 1975 [132]. The Service role is defined in relation to fish, wildlife and their associated habitat issues. The FWS has no veto in this process; its role in the Corps permit program is one of advice-giving on environmental issues. The Corps of Engineers must weigh the full spectrum of these and other issues before making the actual permit decision.

EPA is also required to make a direct contribution to Corps permit evaluation, under Section 404 of the Federal Water Pollution Control Act Amendments of 1972. EPA guidelines call for evaluation of both physical and chemical-biological interactive effects on water quality. The key physical effect is filling wetlands; chemical-biological evaluation needs are determined on a case-by-case basis, with routine types of dredging usually exempted. The manpower which EPA has assigned to the 404 program is strictly limited, therefore, it analyzes only selected permit applications. In the event that EPA agrees with the granting of the permit, it returns a note of no objection to the Corps. On some occasions, EPA has requested that the Corps turn down particular projects or add conditions when granting permits. Failure to notify the Corps within three months of public notice has the same effect as sending a note of no objection [133].

3.3.2 Permits and Licenses for the Use of Federal Lands

A detailed review of the management of public lands is beyond the scope of this report [134]. However, certain aspects of public lands management are more likely than other to influence OCS-related development. Rights-of-way for pipelines or other types of access are generally granted by the Bureau of Land Management in the Department of the Interior for ocean bottom and other BLM-managed lands. Other rights-of-way are granted by the Federal land management agency with management responsibilities. The Fish and Wildlife Service grants rights-of-way for land, such as refuges, that it manages [135].

The use of public lands for rights-of-way and similar purposes is called an "occupancy use." The Federal laws and regulations governing occupancy uses are numerous and varied. On some lands and in some cases a user may purchase title to the land. In others, only limited rights or licenses may be obtained. The environmental impact statement process sometimes gives the public and other agencies great leverage in this process, for instance in the trans-Alaska pipeline case [136]. Others such as short rights-of-way across park or forest lands on barrier islands

may not be seen as warranting an EIS in their own right, though they tie together large facilities.

The "consistency" requirements of the Coastal Zone Management Act of 1972 will have an uncertain effect on Federal public lands management. Though the Federal lands are excluded by the Federal law from a state's planning jurisdiction, the law directs Federal agencies "conducting or supporting activities directly affecting the coastal zone [the state planning area] [to] conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs" [137]. Regulations require such consideration for activities on Federal lands [138].

The 1976 Amendments to the Coastal Zone Management Act strengthened this "consistency" provision with respect to coastal energy facilities, but also added specific planning requirements for coastal energy facilities. The implementation deadline for the new planning requirements is 1979, and may defer the impact of the "consistency" requirement for those facilities even in states which have otherwise approved plans [139].

3.3.3 Federal Programs Which Set Standards or Boundaries for Other Federal Actions in Specific Geographic Areas

A number of Federal programs work indirectly to set special conditions on Federal actions, permits or licenses in specific geographic areas. The Fish and Wildlife Coordination Act, discussed earlier (Section 1.2.1) is one example of this type of authority. Others have special significance for the following coastal areas likely to be impacted in selecting sites for OCS-related onshore or nearshore development.

Marine and Estuarine Sanctuaries

The Office of Coastal Zone Management in the Department of Commerce has the responsibility for designating Estuarine and Marine Sanctuaries under the terms of the Coastal Zone Management Act of 1972 and the Marine Protection, Research and Sanctuaries Act of 1972 [140]. The President's 1977 Environmental Message gave new impetus to the sanctuaries program [141].

Designation under the two acts follows somewhat different procedures. In either case after designation, protective management plans are developed for conservation, recreation, ecologic, and aesthetic values. The Office of Coastal Zone Management has issued regulations governing these programs. Both are in their early stages of implementation with limited funding [142].

Estuarine sanctuaries are normally limited in number to one in each biogeographic area of the United States [143]. Eighteen or more sites could ultimately be designated. Under this program, Federal funds are devoted primarily to land acquisition; state funds must match acquisition dollars one for one and provide an ongoing management budget after Federal start-up assistance [144].

The presence of an estuarine sanctuary near producing lease tracts should be significant, both as a data source and as an environmentally sensitive area to be given special attention in impact assessment.

Marine sanctuaries could serve similar useful ends and would influence selection of right-of-way routes to and from producing lease tracts. Neithe sanctuary area would be eligible for leasing or OCS-related development [145].

The Coastal Zone

The Coastal Zone Management Act of 1972, as amended in 1976, gives a coastal state with a federally approved Coastal Zone Management Program substantial influence over coastal development sponsored by the Federal government or under Federal permits or license.

States are allowed to establish a procedure to certify whether proposed permits or activities are "consistent" with their approved state programs. If the state objects to the permit or activity, the Secretary of Commerce must review the objection [146].

The 1976 Amendments to the Act specifically include energy related development on the Outer Continental Shelf under the "consistency" umbrella (see Appendix C). All Federal agency development activities within a state's approved coastal zone must be referred to the state for consistency review. Other Federal activities, including activities on excluded Federal lands, must be reviewed by the agency proposing the activity which makes its own determination of whether the activity will directly affect the coastal zone [147]. Federal permit or license programs in or directly affecting a state's coastal zone are subject to a different procedure. A state, as a part of its approved Coastal Zone Management Program, lists Federal license and permit activities it wishes to monitor for consistency [148]. It may specify geographic areas outside its coastal zone as well if activities located in these areas are likely to significantly affect the coastal zone. A state with an approved Program may also monitor unlisted activities through the A-95 or other cooperative review procedures. It may notify an agency of its intent to proceed with a consistency review within 45 days of the time it receives notice of the Federal activity in or significantly affecting its coastal zone [149].

The effect of consistency review on advisory roles for agencies such as the FWS is not clear. In some cases, regional offices have requested clarification from states. It is important to note that the right to advise and comment in consistency review is a state right and delegation of other aspects of a State Coastal Zone Management Program may not result in delegation of consistency review [150].

As discussed in Section 3.3.2, the timing for implementation of these provisions is uncertain because of the requirement that a State Program

be Federally approved, and new planning elements required by the 1976 Amendments to the Act.

The Coastal Zone Management Act Amendments of 1976 also established a Coastal Energy Impact Program to provide aid to states and localities experiencing public development costs directly related to energy development [151]. The expanded consistency and planning requirements, discussed earlier, will be the source of development guidelines and policies for this program. A program of loan guarantees and grants-in-aid is also available to ensure reliable financing for public facilities and provide funds to mitigate environmental and recreational losses resulting from both past and future coastal energy development.

The ten-year loan guarantee and grant-in-aid program is available to states and localities whether or not the state has an approved Coastal Zone Management Program. Funds are allocated according to complex formulas based on actual offshore production, and anticipated local energy-related development. The bulk of these funds and loan guarantees in early years will go to Louisiana and Alaska, with increasing proportions to other states as production and related facilities increase based on new leasing [152].

The Environmental/Recreational grant program (E/R Program) is of particular concern to the FWS in its review of Federal permits for OCS-related development. E/R grants are available to mitigate "unavoidable" impacts of OCS-related onshore development. Among other conditions an applicant for this type of grant must establish a fish, wildlife or habitat loss as unavoidable by showing that suitable mitigation could not be achieved through state or local regulatory programs. The grant is not available as an alternative to setting regulatory conditions to achieve maximum feasible mitigation. It is intended as a supplement to permit mitigation where there are no legally feasible mitigation conditions through regulatory programs. One result is to favor past damage for such E/R mitigation grants, because damage occurring prior to passage of the statute is effectively grandfathered out of this requirement [153].

"Section 208" Water Quality Planning Regions

Section 208 of the Federal Water Pollution Control Act Amendments of 1972 sets up a procedure under which states or designated regional agencies are asked to organize a regulatory program to control various types of point and non-point source pollution in cooperation with the Federal EPA. A state may designate a regional planning unit for areas which as a result of urban-industrial concentrations or other factors have substantial water quality control problems, or it may develop the program at the state level [154].

The law provides that the resulting areawide waste treatment management plan identify the treatment works necessary to meet the anticipated municipal and industrial waste treatment needs to meet water quality standards, including requirements for land acquisition. This "208 plan" must include a regulatory program for implementation and target [155]:

- o agriculturally and silviculturally related non-point sources
- o mining
- o construction
- o salt water intrusion into rivers, lakes and estuaries
- o solid waste disposal that affects groundwater.

The governor of each state, in consultation with local governments and the public, identifies the 208 planning areas within a state and designates a planning agency for each area. Several governors may jointly agree to select a planning agency for interstate areas. Even without a formal state designation as a regional planning area, local governments may join together to the same end. These designations must be approved by EPA. The state acts as the planning agency if no special agency is designated for an area [156].

EPA provides funds to assist the regional and state planning agencies in developing their area-wide waste-treatment management plans. Procedures call for the grant application within one year after an agency has been designated. The Regional Office reviews the application and if approved, the Regional Administrator awards the grant [157]. The program has encountered difficulties in the Federal budgetary process, and has been hampered in execution by blocked appropriations [158].

Once the agency finishes the plan, the governor examines it for consistency with basin plans and state regulatory programs under other sections of the Act. Then, in consultation with the planning agency, the governor designates a wastewater treatment management agency to implement the plan [159].

Endangered Species Habitat

Under the Endangered Species Act of 1973, the Fish and Wildlife Service has been charged with the protection of certain listed plant and animal species and their habitats. Their authority is shared with the National Marine Fisheries Service [160].

The habitat protection program reaches Federal activities and work done under Federal permit or license [161].

> Section 7. The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary utilize their authorities in furtherance of the purposes of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions

> authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

Over 200 endangered species have been listed. The complex task of implementing the statutory mandate is still underway. Recent court decisions interpreting Section 7 have also proved controversial and may result in changes in its language. At this time, implementation relies mainly on the NEPA and Coordination Act review process to identify impacts on endangered species habitats associated with on and offshore OCS development [162].

3.4 FEDERAL PERMITS FOR OCS-RELATED INSHORE AND ONSHORE DEVELOPMENT ACTIVITIES

Pipelines and deepwater ports are both directly regulated by the Department of Transportation. The Federal Power Commission also certifies gas pipelines. Industry standards for refineries under the Federal Water and Air Pollution Control Acts exemplify another form of direct Federal influence on OCS-related activity. These permits are required early in the development process. Other regulations such as the Occupational Safety and Health Administration (OSHA) rules may also apply, but are primarily directed at the operation of these facilities. We will not discuss these "operating" regulations since they are beyond the purview of FWS authority. Table 8 compares all OCS-related development activities discussed in this series and Federal permit or license requirements.

3.4.1 Permits or Licenses for Oil and Gas Pipelines

Oil and gas pipelines are subject to regulation by the Department of Transportation, Materials Transportation Bureau (MTB) which sets safety and design standards [163]. Interstate gas pipelines go through an approval review with the Federal Power Commission before review by the Office of Pipeline Safety in the Department of Transportation (Figure 8 and Table 12) [166].

"Gathering lines," or the pipelines used to bring oil or gas from a well to a collection point within an offshore field are regulated by USGS as part of its responsibility for offshore production [167]. All other pipelines in navigable waters require a permit from BLM for a right-of-way [168].

Ordinarily the FWS does not participate in reviewing DOT enforcement proceedings unless brought in because of a specific Service responsibility, for instance the Endangered Species Program [169]. The FWS responsibilities are outlined under S.O. 2974. The FWS comments on rights-of-way through navigable waters under the dredge and fill permit program, which is administered separately from these special pipeline safety provisions (see Section 3.3.1).

Figure 8. Regulatory procedures for pipelines (Source: Reference 164).

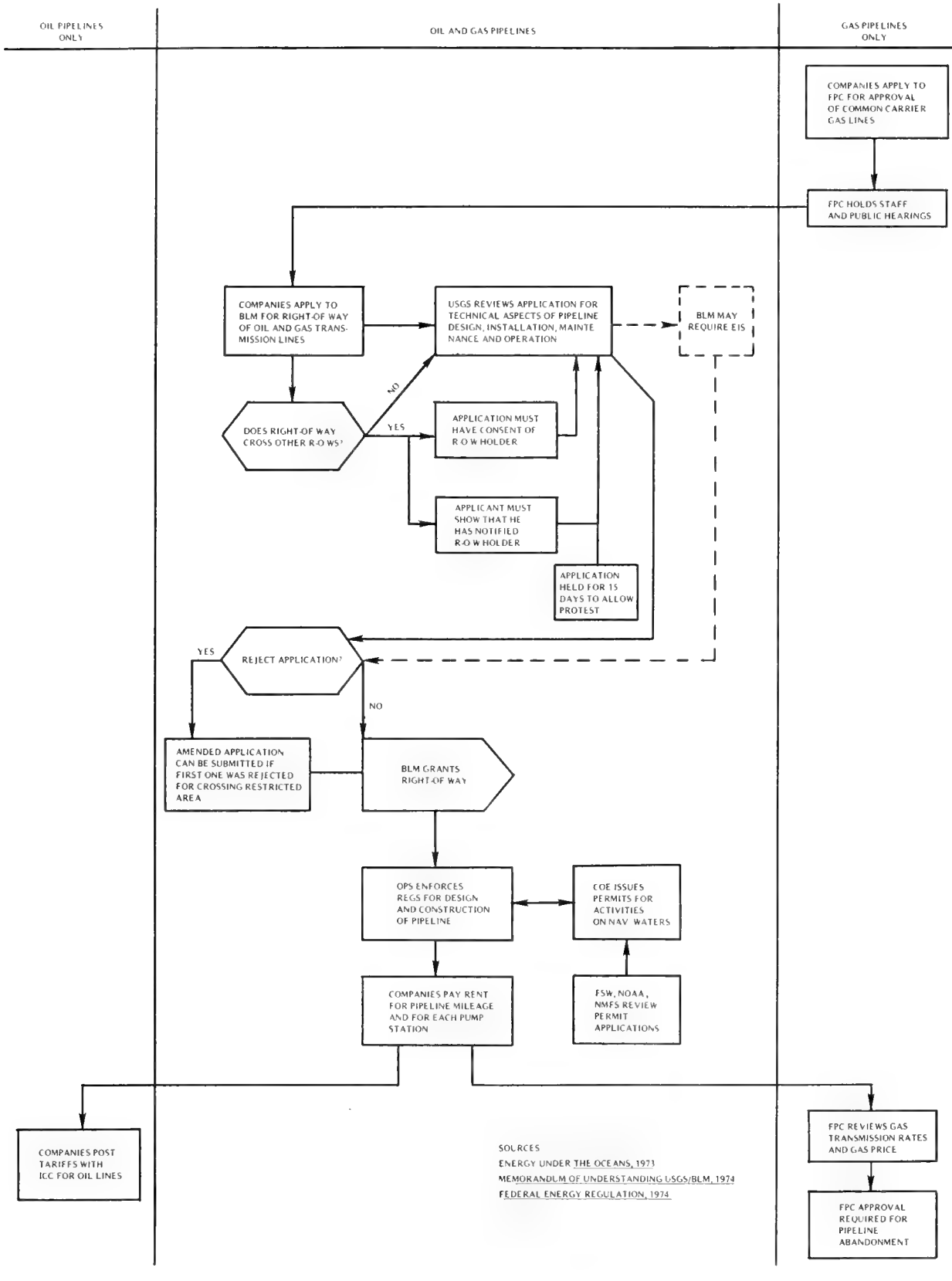

Table 12. Regulatory Responsibilities for Pipelines (Source: Reference 165)

FUNCTIONAL AREA / TYPE OF PIPELINE	SITING	EMISSIONS AND EFFLUENTS (E/E)	PUBLIC SAFETY	WORKER HEALTH AND SAFETY	RATE MAKING	ABANDONMENT
OFFSHORE	BLM: GRANTS RIGHT-OF-WAY PERMITS FOR GAS AND OIL PIPELINES FWS COMMENTS-S.O. 2974 USGS REVIEWS PERMITS APPLICATIONS SUBMITTED TO BLM FWS. COMMENTS S.O. 2974 FPC ISSUES CERTIFICATES FOR CONSTRUCTION AND OPERATION OF OFFSHORE GAS TRANSMISSION LINES COE ISSUES PERMITS FOR ACTIVITIES IN OR AFFECTING NAVIGABLE WATERS FSW, NOAA, NMFS REVIEW APPLICATION BEFORE COE DECIDES ON THE ISSUANCE OF A PERMIT	BLM: INCLUDES STIPULATIONS FOR E/E AS CONDITIONS FOR GRANTING RIGHT-OF-WAY FPC: INCLUDES STIPULATIONS FOR E/E AS CONDITIONS FOR GRANTING CERTIFICATES COE: ISSUES PERMITS AND ENFORCES REGULATIONS REGARDING DISPOSAL OF DREDGED OR FILL MATERIAL FWS: RECOMMENDS STIPULATIONS TO BE INCLUDED IN COE PERMIT CG: ENFORCES AND ESTABLISHES REGULATIONS CONCERNING PREVENTION AND CLEANUP OF DISCHARGES FROM PIPELINES OPS: ISSUES AND ENFORCES REGULATIONS DESIGNED TO PREVENT E/E FROM PIPELINES	BLM: INCLUDES PUBLIC SAFETY STIPULATIONS AS CONDITIONS FOR GRANTING RIGHT-OF WAY PERMITS FPC: INCLUDES PUBLIC SAFETY STIPULATIONS AS CONDITIONS FOR GRANTING CERTIFICATES CG: ISSUES AND ENFORCES REGULATIONS CONCERNING CLEANUP OF OIL DISCHARGES AND PLANS FOR HANDLING FIRES THAT MIGHT RESULT FROM BREAKS IN OIL AND GAS PIPELINES OPS: ISSUES AND ENFORCES REGULATIONS PERTAINING TO DESIGN AND CONSTRUCTION FOR OIL AND GAS PIPELINES NTSB: INVESTIGATES AND PREPARES REPORTS ON ACCIDENTS AFFECTING OFF-SHORE OIL AND GAS PIPELINES INVOLVED IN INTERSTATE COMMERCE	OSHA: ESTABLISHES AND ENFORCES WORKER HEALTH AND SAFETY REGULATIONS	FPC: REVIEWS GAS TRANSMISSION RATES AND GAS PRICES FOR OPERATIONAL GAS PIPELINES ICC: GRANTS APPROVAL OF THE TARIFF RATES FOR TRANSPORTATION OF OIL BY COMMON CARRIER PIPELINES	FPC: GRANTS APPROVAL OF ABANDONMENT OF OFF-SHORE NATURAL GAS PIPELINES (NO PERMIT REQUIRED FROM ICC FOR ABANDONMENT OF OIL PIPELINE)

Table 12 - Continued

FUNCTIONAL AREA / TYPE OF PIPELINE	SITING	EMISSIONS AND EFFLUENTS (E/E)	PUBLIC SAFETY	WORKER HEALTH AND SAFETY	RATE MAKING	ABANDONMENT
ONSHORE	BLM: GRANTS RIGHT-OF-WAY PERMITS FOR GAS AND OIL PIPELINES	BLM: SAA	BLM: SAA	OSHA: SAA	FPC: SAA	
	FPC ISSUES CERTIFICATES FOR CONSTRUCTION AND OPERATION OF GAS TRANSMISSION LINES	FPC SAA	FPC SAA		ICC: SAA	
	COE ISSUES PERMITS FOR ACTIVITIES IN OR AFFECTING NAVIGABLE WATERS	COE SAA FWS: SAA OPS. SAA	OPS. ISSUES AND ENFORCES REGULATIONS PERTAINING TO DESIGN AND CONSTRUCTION FOR OIL AND GAS PIPELINES: ALSO ISSUES AND ENFORCES REGULATIONS PERTAINING TO THE PIPELINE TRANSPORTATION OF HAZARDOUS MATERIALS AND PETROLEUM PRODUCTS BY CARRIERS ENGAGED IN INTERSTATE COMMERCE			
	FWS, NOAA, NMFS REVIEW APPLICATION BEFORE COE DECIDES ON THE ISSUANCE OF A PERMIT	EPA IS CONCERNED WITH PIPELINE ASSOCIATED FACILITIES AND NOT THE PIPELINE ITSELF FOR PUMPING STATIONS AND TERMINALS, EPA ISSUES WATER DISCHARGE PERMITS. AIR EMISSIONS FROM PUMPING STATIONS ARE CONTROLLED BY STATES AND EPA				

SAA - SAME AS ABOVE

3.4.2 Deepwater Ports

Deepwater port transshipment and processing facilities located beyond the three-mile limit of an adjacent coastal state's jurisdiction are licensed under the Deepwater Port Act of 1974, by the Secretary of Transportation. The U.S. Coast Guard has been given primary public management authority over design, construction and operation [170].

The associated nearshore and inshore facilities fall within the multiple jurisdictions and interests described elsewhere in this report, though nearshore deepwater facilities are also subject to U.S. Coast Guard controls on navigation and vessel safety [171].

Potential nearshore and inshore impacts and permit requirements under the Deepwater Port Act may be identified through the Act's "adjacent state" procedures. An "adjacent state" is defined as any state with a boundary within 15 miles of a deepwater port terminal or one through which a pipeline would run linking the terminal with shore facilities. The Secretary of Transportation may grant other governors' requests for adjacent state designation "if he determines that there is a risk of damage to the coastal environment of such state equal to or greater than the risk posed to a state directly connected by pipeline to the proposed deepwater port" [172].

The governor of an adjacent state:

- Can veto an application for a deepwater port
- Can propose stipulations on the license
- Receives public notice of any application and required hearings
- May set reasonable fees for the use of the port and related land based facilities to compensate environmental losses and administrative costs
- May have access to certain industry information needed to deal with the impact of the port.

The Secretary of Transportation coordinates other agency comment and related permit procedures through an Office of Deepwater Ports [173]. EPA has a statutory veto on licensing keyed to the Clean Air, Water Pollution Control, and Marine Sanctuaries Acts [174].

U.S. Coast Guard regulations governing the design and operation of these ports are found in the November 10, 1975 Federal Register [175]. They do not extend to nearshore and onshore facilities, though these must be described in a license application. The permits issued by the U.S. Coast Guard are valid for 20 years.

Fish and Wildlife Service interests might be alerted by the license application. FWS provides comments to the Deepwater Ports Board of the USCG on an application and submits joint comments with the Department of Commerce to review potential natural resource alterations and project options to reduce or mitigate these impacts. FWS would also be involved through additional nearshore and onshore permits described elsewhere in this section.

3.4.3 Tanker Operations

The U.S. Coast Guard is primarily responsible for surveillance and enforcement of safety and operating guidelines and regulations for tanker operations in U.S. waters. These are defined in considerable detail in the Code of Federal Regulations, Volume 33, Part 155, and Volume 46, Chapter 1. United States flag vessels and foreign flag vessels in U.S. domestic trade exceeding 150 tons are included under these provisions. Other regulatory authorities are outlined in Table 13.

Oil spills from tankers fall under the Comprehensive Oil Pollution Liability and Compensation Act of 1975 which establishes a basis for liability for owners and operators of tankers and sets specific maximum amounts for liability.

3.4.4 National Pollutant Discharge Elimination System (NPDES)

The Federal Water Pollution Control Act Amendments of 1972 set goals of "swimmable" waters throughout the United States by 1983 and no discharge of pollutants into U.S. waters by 1985. Under this program permits, referred to as NPDES permits, are required for certain new sources of water pollution. The program is organized by category of source. National standards are set for each category [177].

The law allows the program to be delegated to states under the supervision of the Federal EPA. In 1977, 28 states had qualified to assume the implementation role from EPA [178].

The Environmental Impact Assessment process applies to these permits, but with a special set of rules that excludes permits for existing facilities. The FWS review is limited by the number of personnel required for review and extensive expertise in chemical pollutants among its field biologists. The Service does pay particular attention to thermal discharges or other unusual discharge characteristics with direct implications for fish and wildlife resources and their habitat. It may coordinate its comments with EPA and state agencies when difficult questions of this type arise, to join them in pressing for project modifications.

Table 13. Agencies with Authority Over Tanker Operations. (Source: Reference 176)

Agency	Jurisdiction, Statutes Codes
American Bureau of Shipping	Classifies all merchant vessels as to hull integrity, seaworthiness, cargo capability, etc.; Rules for Building and Classing Steel Vessels.
Federal Communications Commission	Requires vessel bridge-to-bridge radiotelephone on all large vessels; 47 CFR, Parts 81 and 83.
Federal Maritime Commission	Certifies financial responsibility; Federal Water Pollution Control Act, 46 CFR, Part 452.
Maritime Administration, U.S. Department of Commerce	Reviews and approves conceptual engineering design specifications and drawings; Merchant Marine Act, Title XI.
Occupational Safety and Health Administration, U.S. Department of Labor	Approves construction and operation of facilities according to regulations governing the general safety of workers.
U.S. Coast Guard	Approves vessel design and operations; regulates safe shipping practices; Dangerous Cargo Act and Ports and Waterways Safety Act.
	Requires hull markings which indicate maximum load depths on large merchant vessels; 46 CFR Section 2.85-1 and 46 CFR Part 42.
	Issues Certificates for Cargo Ship Safety Equipment; 46 CFR, Section 31.40-10
	Regulates citizenry, competence and physical condition of crew; 46 CFR, Parts 10-16.
	Documents ownership of vessel, registration, and place of construction for vessels which operate between points in the U.S.; 46 U.S.C. Sections 11-63, 251-355; 46 CFR.
	Regulates oil transfer operations between vessels and shoreside facilities; 33 CFR 154-156.

REFERENCES

1. Outer Continental Shelf Lands Act, 43 U.S.C. Section 1331 et seq. (1975 Supp.).

2. U.S. Fish and Wildlife Service and U.S. National Marine Fisheries Service, Memorandum on Coastal Zone Program Support (1976).

3. U.S. Department of the Interior, Fish and Wildlife Service. 1976. Fiscal Year 1975 Biological Services Program. Washington, D.C.

4. Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c (1970).

5. National Environmental Policy Act, 42 U.S.C. Section 4321 et seq. (1975 Supp.).

6. U.S. Department of the Interior, Fish and Wildlife Service. 1975. National Wildlife Refuge System, RL IA-R-5. Washington, D.C.

7. Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. Sections 1251-1265, 1281-1292, 1311-1328, 1341-1345, 1361-1376 (1975 Supp.); P.L. 92-500, Oct. 18, 1972; 86 Stat. 816. (Hereinafter FWPCA of 1972). Rivers and Harbors Act of 1899 (The "Refuse Act"), 33 U.S.C. Sections 401-413 (1970).

8. See note 3.

9. Op. cit. U.S.C. Section 661(a) (1970).

10. Exceptions noted in 16 U.S.C. Section 661(h) include:
    a) impoundments under 10 acres,
    b) land management activities on Federal lands carried on by Federal Agencies.

11. U.S. Department of the Interior, Fish and Wildlife Service. 1975. Navigable Waters Handbook. Guidelines were published in Federal Register, Vol. 40, No. 231. Dec. 1, 1975. pp. 55810-824. (Hereinafter NWH Guidelines).

12. Navigable Waters Handbook, Appendix B, Standard Forms and Procedural Aids (1974).

13. Ibid.

14. Memorandum of Understanding Between the Secretary of the Interior and the Secretary of the Army. July 13, 1967. reproduced in 33 CFR Part 209, App. B (1976).

15. The Research Group, Inc. July 1977. Description and Analysis of the Fish and Wildlife Service Permit Review Process. Prepared for the Annapolis Field Office, FWS. Atlanta, Georgia.

16. 16 U.S.C. Section 662(b) (1970).

17. 42 U.S.C. Section 4332(C) (1970).

18. Ibid. ("...the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved.")

19. Environmental Defense Fund v. Froehlke, 473 F.2d 346 (8th Cir. 1972); Committee for Nuclear Responsibility Inc. v. Seaborg, 463 F.2d 788 (D.C. Cir. 1971).

20. Natural Resources Defense Council, Inc. v. Grant, 355 F.Supp. 280 (D.C.N.C. 1973). But the courts have rejected recent "11th hour" suits to remedy alleged defects in final environmental impact statements, requiring an early foundation for a later claim of inadequacy. E. 63rd St. Assoc. v. Coleman, 9 ERC 1192 (D.C.S.N.Y., May 17, 1976).

21. Section 309 of the Clean Air Act (42 U.S.C. Section 1857 et seq. (1977 Supp.) formally provides for EPA review of NEPA statements for Air Act violations. FWS review for endangered species implications has a similar effect.

22. See note 17; Caldwell, The National Environmental Policy Act: Retrospect and Prospect. ELR 50030-38 (March 1976).

23. U.S. Council on Environmental Quality. 1976. Guidelines for the Preparation of Environmental Impact Statements, 40 CFR Part 1500

24. Ibid.

25. These provisions are incorporated in Agency regulations in appropriate sections of the Code of Federal Regulations (CFR).

26. 42 U.S.C. 4322(D) (1975 Supp.).

27. Trans-Alaska Pipeline Authorization Act, Public Law 93-153, Section 203(d); 87 Stat. 576 (1973).

28. U.S. Department of the Interior, Secretarial Order 2974. January 19, 1977.

29. U.S. v. State of California, 332 U.S. 19 (1947); U.S. v. Louisiana, 339 U.S. 699 (1950); U.S. v. Texas, 339 U.S. 707 (1950); OCS Lands Act of 1953, P.L. 212, 67 Stat. 462 (1953).

30. 43 CFR Part 3300 (1976).

31. The Supreme Court cases cited in note 27 discuss the basic issues surrounding this point.

32. See, e.g., New York v. Kleppe, 9 ERC 1976 (EDNY, Aug. 13, 1976).

33. White House Fact Sheet. March 11, 1977.

34. Secretarial Order 2974. January 19, 1977.

35. OCS Lands Act, 43 U.S.C. Section 1331 et seq. (1975 Supp).

36. BLM: 43 CFR Part 3300 (1976). USGS: 30 CFR Part 250 (1976). FWS: 40 Fed. Reg. 55804 (1975). The regulations and guidelines appear both in the Federal Register, when first issued, and usually in the Code of Federal Regulations. Guidelines are sometimes only published in the Federal Register, with reprints available from the responsible agency.

37. See note 8.

38. U.S. Department of the Interior. Memorandum of Understanding of November 26, 1972; S.O. 2974. January 19, 1977.

39. U.S. Department of the Interior. Fish and Wildlife Service. Internal Procedures for Fish and Wildlife Service Participation in the Department of the Interior Outer Continental Shelf Mineral Development Program as Directed by Secretarial Order 2974. February 24, 1977.

40. Ibid.

41. U.S. Department of the Interior News Release. Revised OCS Planning Schedule. May 25, 1977.

42. See note 39.

43. Ibid.

44. 43 CFR Section 3301.4. See U.S. Department of the Interior, Geological Survey. Mineral Resource Management of the Outer Continental Shelf. Circular 720 (1975).

45. See note 39.

46. Ibid.

47. Ibid.

48. Ibid.

49. Ibid.

50. S.O. 2974. January 19, 1977.

51. Interview with the Fish and Wildlife Service. OCS Coordinator's office, July, 1977.

52. See Note 39.

53. Ibid.

54. Ibid.

55. Ibid.

56. Ibid.

57. U.S. Department of the Interior, Geological Survey. 1975. Mineral Resource Management of the Outer Continental Shelf. Circular 720. Washington, D.C. p. 10.

58. Generally a hearing is held within 30-60 days of the draft EIS, if one is held. See 43 CFR Section 3301.4 (1976).

59. See note 39.

60. 40 CFR Section 1500 et seq. (1976).

61. Lease stipulations are proposed in the notice of sale. For example:

Lease Terms and Stipulations

12. Leases issued as a result of this sale will be on Form 3300-1 (February 1971) as modified in accordance with this paragraph, and will contain one or more of the following stipulations and will exclude the following language from section 3(a)(1), paragraph 3, sentence 2 of Form 3300-1, "* * * and gas used for purposes of production from and operations upon the leased area or unavoidable lost * * *."

Stipulation No. 1. (To apply to all leases resulting from this lease sale.)

(a) If the Supervisor, having reason to believe that a site, structure, or object of historical or archaeological significance, hereinafter referred to as "cultural resource", may exist in the lease area, shall, within one year from the effective date of this lease, give the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall immediately upon receipt of such notice comply with the following requirements:

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including, but not limited to, well drilling and pipeline and platform placement, hereinafter referred to as "operation", the lessee shall conduct geophysical surveys to determine the potential existence of any cultural resource that may be affected by such operation. All data produced by such geophysical surveys shall be examined by a qualified marine archaeologist or archaeological surveyor to determine if anomalies are present which suggest the existence of a cultural resource that may be adversely affected by any lease operation. If such anomalies exist, the lessee shall: (1) locate the site of such operation so as not to adversely affect the anomaly identified; or (2) establish, to the satisfaction of the Supervisor, on the basis of further archaeological investigation conducted by a qualified marine archaeological surveyor using such survey equipment and techniques as deemed necessary by said archaeological surveyor with the concurrence of the Supervisor, either that such operation will not adversely affect the anomaly identified or that the potential cultural resource suggested by the occurrence of the anomaly does not exist.

Upon completion of any geophysical or other survey conducted for archaeological purposes, the lessee shall forward a report prepared by the marine archaeologist or archaeological surveyor to the Supervisor for his review. Should the Supervisor determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the Supervisor has given directions as to its disposition.*

*Cultural resources will be handled according to procedures outlined in 36 CFR, Part 800 (Federal Register, January 25, 1974).

(b) Structures for drilling or production, including pipelines, shall be kept to the minimum necessary for proper exploration, development, and production, and to the greatest extent consistent therewith, shall be placed so as not to interfere with other significant uses of the Outer Continental Shelf including commercial fishing. To this end, no structure for drilling or production, including pipelines, may be placed on the Outer Continental Shelf until the Supervisor has found that the structure is necessary for the proper exploration, development and production of the lease area and that no reasonable alternative placement would cause less interference with other significant uses of the Outer Continental Shelf including commercial fishing. The lessee's exploratory and development plans, filed under 30 CFR 250.34, shall identify the anticipated placement and grouping of necessary structures, including pipelines, showing how such placement and grouping will have the minimum practicable effect on other significant uses of the Outer Continental Shelf including commercial fishing.

(c) The lessee shall have the pollution containment and removal equipment available as required by OCS Order No. 7, of August 28, 1969, as may be amended. After notification by the Operator to the Supervisor of a significant oil spill as defined by OCS Order No. 7, or an oil spill of any size or quantity which cannot be immediately controlled, the operator shall immediately deploy the appropriate equipment to the site of the oil spill, unless, because of weather and attendant safety of personnel the Supervisor shall modify this requirement.

Stipulation No. 2. (To apply to leases resulting from this lease sale on tracts 41-25, 41-26 and 41-29.)

No structures, drilling rigs, or pipelines will be allowed within the aliquots established for the East and West Flower Garden Banks:

East Flower Garden Bank

Tract 41-25

W½SW¼NW¼; SE¼SW¼NW¼; W½SW¼; W½E½SW¼; SE¼SE¼SW¼

Tract 41-26

SW¼NE¼NE¼; S½NW¼NE¼; S½NE¼; SE¼NE¼NW¼; N½SE¼NW¼; SE¼SE¼NW¼; NE¼SW¼; N½SE¼SW¼; SE¼SE¼SW¼; SE¼

West Flower Garden Bank

Tract 41-29

NW¼SW¼NE¼; S½S½NE¼; SE¼NW¼; NE¼SW¼; NE¼NW¼SW¼; S½NW¼SW¼; S½SW¼; SE¼

Exploration and development operations are permitted within the circle outside above aliquots, with radius of 20,064 feet around point P; located by X = 3,742,875, Y = 71,280 for East Flower Garden and X = 3,674,965, Y = 50,690 for West Flower Garden (Texas Lambert System).

Operations in this zone are restricted as follows: Drill cuttings and drilling muds must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance from the bottom as determined by the Supervisor; however, if the shunting method is not adequate to protect the unique character of the subject area, then the Supervisor will require barging the material a minimum of ten miles from any 25 fathom isobath surrounding live reef-building coral before disposal. Should barging be the method selected, disposal sites must be approved by the Supervisor.

No garbage, untreated sewage, or other solid waste shall be disposed from vessels (work-boats, crew-boats, supply boats, pipe-laying vessels) during exploration, development and production operations within the area of the bank described above for exploration and development operations. No drilling permits will be issued by the Supervisor until he has found that the lessee's exploration and development plan filed under 30 CFR 250.34 is adequate to insure that exploration and production operations in the leased area will have minimum adverse effect on the biotic community of high value reef sites on the Flower Garden Banks. As a part of the development plan, a reef monitoring program must be included.

The monitoring program will be designed to assess the affects of oil and gas exploration and development operations on the viability of the coral reefs. The development plan should indicate that the monitoring program will be conducted by qualified independent scientific personnel and that program personnel and equipment will be available at the time of operations. The monitoring team will submit its findings to the Supervisor on an interim on-going basis, or immediately in case of imminent danger to the reefs resulting directly from drilling or other operations.

Stipulation No. 3. (To apply to leases resulting from this lease sale on tracts 41-7, 41-30, 41-35, 41-37, 41-47, 41-53, 41-63, 41-71, 41-72, 41-77, 41-78, 41-79, 41-80, 41-88, 41-92, 41-95, 41-96, 41-102, 41-104, 41-105, 41-106, 41-107, 41-113, 41-114, and 41-115.)

The lessee agrees that, prior to any drilling activity or placement of any permanent production structures, he will submit as part of his exploration and/or development plan, geophysical or other data on seafloor features sufficient to prove to the Supervisor's satisfaction that conflict with any fishing activities in these areas will be kept to a minimum. Included in the exploration and/or development plan will be the bottom mapping of the proposed drilling sites. On the basis of proximity to topographic features, as determined from the data, these sites should be so located as to cause minimal conflict with any fishing activities in these areas. The aforementioned exploration and/or development plan must be submitted to the Supervisor for approval.

Drill cuttings and drilling muds must be disposed of by shunting the materials to the bottom through a downpipe that terminates an appropriate distance from the bottom or by other appropriate methods if determined by the Supervisor to be necessary to protect the unique character of the subject area.

No drilling permits will be issued by the Supervisor until he has found that the lessee's exploration and/or development plan filed under 30 CFR 250.34 is adequate to insure that exploration and production operations in the lease area will have a minimal adverse effect upon any fishing activities on these tracts.

Stipulation No. 4. (To apply to leases resulting from this lease sale on tracts 41-73 and 41-76 thru 41-135.)

If a pipeline is technically and economically feasible, no oil production will be transported by barge from this offshore lease to onshore facilities in the States of Florida, Mississippi and Alabama except in case of emergency or unusual circumstances. Determination as to emergency or other conditions and the technical and economic feasibility of pipeline installation will be made by the Supervisor. For continuous production, transportation of oil by barge from this lease to onshore facilities in the States of Florida, Mississippi, and Alabama will not be permitted.

Stipulation No. 5. (To apply to leases resulting from this lease sale on tracts 41-1, 41-2, 41-76 thru 41-84, and 41-117 thru 41-128.)

> Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occurs in, on, or above the Outer Continental Shelf, to any persons or persons or to any property of any person or persons who are agents, employees or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the Gulf Test Range, the Pensacola Naval Air Station, Eglin Air Force Base, MacDill Air Force Base, Tyndall Air Force Base or Naval Air Advance Training Command, Naval Air Station, Corpus Christi, Texas. The lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against, and to defend at its own expense the United States against, all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents or any independent contractors or subcontractors doing business with the lesse in connection with the programs and activities of the aforementioned military installations, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under theories of strict or absolute liability or otherwise.

62. See note 39.

63. Ibid.

64. Ibid.

65. U.S. Department of the Interior, Geological Survey. 1975. Mineral Resource Management of the Outer Continental Shelf. Circular 720. Washington, D.C. p. 11.

66. See note 39.

67. 43 CFR Section 3301.5 (1976).

68. 43 CFR Subpart 3302 (1976).

69. 43 CFR Section 3302.5 (1976).

70. Ibid.

71. See note 39.

72. 30 CFR Part 250 (1975); U.S. Department of the Interior, Geological Survey. Policies, Practices and Responsibilities for Safety and Environmental Management in Oil and Gas Operations on the Outer Continental Shelf. June 1972.

73. 30 CFR Section 250.10 (1975).

74. 30 CFR Section 250.34 (1975).

75. 30 CFR Section 250.90-97 (1975).

76. 30 CFR Section 250.10 (1975).

77. See note 39.

78. Ibid.; U.S. Department of the Interior, Fish and Wildlife Service. Guidelines, Oil and Gas Exploration and Development Activities in Territorial and Inland Navigable Waters and Wetlands. 40 Federal Register 55804. December 1, 1975.

79. U.S. Department of the Interior, Memorandum of Understanding Between Bureau of Land Management and U.S. Geological Survey for OCS Pipelines. August 1, 1974.

80. Ibid.

81. 49 CFR Part 192.1 (1976).

82. See Section 3.4.1.

83. See Section 3.3.1.

84. See Section 3.4.4.

85. U.S. Department of the Interior, Bureau of Land Management. Environmental Studies Program. July, 1977

86. Now coordinated under S.O. 2974. January 19, 1977.

87. Ibid.

88. See note 39.

89. See note 39.

90. See Table 2.

91. Volume 1 of this study, Recovery Technology, details the nature and regulatory context for particular types of development. Table 8 summarizes these discussions.

92. See Soper. The Constitutional Framework of Environmental Law, in Federal Environmental Law, Environmental Law Institute. (1974). pp. 20-122.

93. Ibid.

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97. Ibid.

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99. See Bosselman and Callies. 1972. The Quiet Revolution in Land Use Control. Council on Environmental Quality, Washington, D.C.

100. Soper, note 84.

101. Coastal Zone Management Act of 1972, 33 U.S.C. 1101-1124 (as amended, 1976).

102. Soper, note 84.

103. Bosselman, Callies and Banta. 1973. The Taking Issue. Council on Environmental Quality, Washington, D.C.

104. Ibid.

105. Flood Disaster Protection Act of 1973, 42 U.S.C. Section 4000 et seq. (as amended, 1977).

106. See section 3.3.3.

107. Ibid.

108. FWPCA Amendments of 1972, Section 404.

109. Ibid.

110. Natural Resources Defense Council v. Callaway, 392 F.Supp. 685 (D.C.D. 1975).

111. 33 CFR Part 209 (1976).

112. 33 CFR Section 209.120 (1976).

113. Power. The Fox in the Chicken Coop: The Regulatory Program of the U.S. Army Corps of Engineers. Wetlands/Edges Program of the Chesapeake Research Consortium, Inc. (1976).

114. 33 CFR Section 209.120 (1976).

115. Ibid.

116. Federal Register, Vol. 42, p. 37127, July 19, 1977.

117. 33 CFR Part 320 (1977 Supp.).

118. 33 CFR Parts 320 through 329 (1977 Supp.); Federal Register, Vol. 42, pp. 37122-37164, July 19, 1977.

119. 33 CFR Part 322 (1977 Supp.).

120. 33 CFR Part 323 (1977 Supp.).

121. See note 118.

122. Ibid.

123. Ibid.

124. 33 CFR Section 325.3 (1977 Supp.).

125. See note 118.

126. 33 CFR Section 325.2(d) (1977 Supp.).

127. 33 CFR Section 320.4(j) (1977 Supp.).

128. 33 CFR Section 325.4 (1977 Supp.).

129. 33 CFR Part 327 (1977 Supp.).

130. "Referral to the Chief of Engineers," 33 CFR Section 325.8(d) (1977 Supp.).

131. Ibid.

132. See note 11.

133. 33 CFR Section 325.3 (1977 Supp.).

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136. Natural Resources Defense Council. Land Use Controls in the United States. (1977). This book, whose title is something of a misnomer, focuses on the Federal role in resources management.

137. See Appendix C.

138. Federal Register. Vol. 42. pp 43586-43610. August 29, 1977.

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142. The Office of Coastal Zone Management is examining implementation options through contract studies during FY 77.

143. Ibid.

144. The management and use conditions for such sanctuaries are subject to relatively flexible agreements tailored to each proposed sanctuary. There are some types of OCS-related development that could conceivably be accommodated if they entailed no effect on the natural values addressed in the management agreement or plan.

145. Coastal Zone Management Act of 1972, Section 315 (as amended, 1976).

146. See Appendix C.

147. See note 138.

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149. 15 CFR Subpart 930C (proposed, 1977).

150. Interview with OCZM, August, 1977.

151. 16 U.S.C. Section 1451 (1977 S7pp.); P.L. 94-370, 90 Stat. 1013 (July 26, 1976).

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167. See note 79.

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178. 40 CFR Part 124 (1976).

APPENDIX A

Due Process and the "Taking Issue"

Government regulation of development raises a powerful myth, that suggests the Fifth Amendment to the United States Constitution--"...nor shall private property be taken" from regulation which restricts use of property. Likewise, there is a spreading fear that government at all levels can take private land for public use without paying compensation through zoning and environmental regulations. Though unfounded, the fear is fostered by the exceedingly complex ownership and regulatory situation posed by coastal water areas and resulting restrictions on private use.

A landowner whose land is slated for expropriation as a recreation area or public refuge is protected by the Fifth Amendment. Acquisition procedures are watched closely by legal counsel and protected in the courts. Acquisition must be for legitimate public purposes (which may be questioned in court) and the government must provide "just compensation," usually defined at the fair market value of the property excluding any influence from the proposed public improvements. The taking issue does not arise because the issues are clear-cut and legislation defines the procedures for expropriation and compensation [1].

However, some of the objectives served by the publicly acquired wildlife refuge--protection of endangered species; water quality; and wetlands function--also may be legitimate regulatory objectives under the Commerce Clause for the Federal Government and the Police Power of the State. A regulation adopted to serve these purposes may substantially restrict the use of land without any provision for compensation and still pass the constitutional tests. Depending on the general position of a state's courts, the probability of success in a court challenge to eliminate restrictions on use may range from slight to substantial.

The uncertainty is compounded by the absence of clear rules from the U.S. Supreme Court. The classic constitutional test for invalidity has been described as a balancing of the public purpose of a regulation against the private harm borne by a landowner; if the balance tips in favor of the landowner, the regulation is unconstitutional and invalid. In most cases, courts arrive at the Supreme Court rule in the famous Pennsylvania

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[1]Based in part on an article by the author appearing in OCEANUS, Vol. 19, No. 5, fall 1976, (Woods Hole Oceanographic Institution, Woods Hole, Massachusetts).

Coal case: "The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking" [2].

The most important factors that affect the rule applied in water areas are: (1) the public purpose served by the regulation which might be challenged; (2) competing public interests in the affected property (easements, public trust, navigation servitude); (3) loss of value. None give a firm guide to the constitutional limits of government regulation, but they form the first point of reference.

Public Purpose

Regulations for the public protection of wetlands and estuarine areas find their roots in the constitutional right to protect public health, safety and the general welfare, and the commerce power of the Federal government. Early regulations were adopted to prohibit nuisances such as noise, odor or dirt. Nineteenth Century coastal restrictions covered sand and gravel removal that threatened protective natural features. A Massachusetts court asked to review the efforts of Plymouth to protect its harbors, beaches and bars in the 1850's saw a prohibition on gravel removal as a natural and legitimate objective [3].

Resource management purposes were viewed with skepticism however, by the courts a century later as regulations for floodplains, wetlands and water quality began to emerge. Some courts looked to intended uses to describe purpose. For example, a zone for meadows conservation that only permitted power lines, radio transmission towers and other public and quasi-public uses along with farming was held invalid in New Jersey. The court viewed the zoning provision as an inappropriate effort to acquire public rights in private property.

New Jersey's courts have since indicated approval of floodplain zoning and wetlands management, although their earlier strong statement about the acquisition of public rights through regulation remains influential and has not been overruled [4].

Apparently similar restrictions on development may result in different court positions on the taking issue. Some commentators describe some public purposes as "heavyweights" in the balancing test, that justify especially tough restrictions on an activity. Actions to block or even eliminate safety hazards like rock quarries in urban areas, or dirty industry are traditional heavyweights. Regulations for these "nuisance" purposes have been the type most frequently considered by the U.S. Supreme Court. Its rejection of taking arguments makes clear the fact that regulation may have a substantial impact on value. But the Court has not reviewed the hard cases.

These are exemplified by aesthetic judgments such as public decisions on landscape and architectural design. A long battle over removal of unsightly advertising signs has fueled this legal discussion. Complex amortization and compensation provisions are often added to this type of regulation to adjust the balance of public purpose and private harm.

Coastal environmental legislation does not clearly fit into either category. As coastal ecosystem diagnosis becomes more precise, nuisance-like health, safety and welfare effects are more easily identified. But in the interim, courts have been influenced by legislative findings that capsulize the considerations that support particular regulatory programs.

In California, the San Francisco Bay Conservation and Development Commission benefited greatly from a strong legislative statement in defense of the Bay in its authorizing legislation. Initial court challenges to tough dredge and fill regulations were rebuffed with references to the clear objectives the legislature had set out. The courts found the power to regulate land uses in such sensitive areas "develops, within reason, to meet the changed and changing conditions [of the present day]" [5].

Competing Public Interest in the Affected Property

In or near water areas, government agencies can sometimes claim a preexisting public interest in coastal land to further justify strict regulation and sidestep constitutional challenge. The navigation servitude from the Zabel v. Tabb case offers one example where Federal courts allowed the denial of a dredge and fill permit based on environmental considerations and the servitude [6].

State and local regulations often require the dedication of public accessways in certain development situations, most frequently with the subdivision of land. The rationale is the same as that used when land for streets is required by local government in a new development. Court rulings on this issue vary from state to state but several states have a clear line defining what is and is not a constitutional dedication requirement, often permitting substantial mandatory land dedications.

The legal rules surrounding the "public trust" in tidelands and adjoining shorelands also frequently provide opportunities to sidestep the taking question. In the early 19th century it was an established principle that title to tidal wetlands was reserved to the states with the creation of the Federal Union. In 1842 the U.S. Supreme Court reviewed the extent of these rights and agreed that earlier grants to private persons were subject to the public's rights held in trust by the state.

The notion has evolved differently in each of the coastal states. In general, the argument says that title remains in the state because the state holds title for the public trust. Grants for particular uses such as wharfage and excavation may be valid, but regardless of the nature

of the grant, there is a residual public interest which may be asserted.

Unlike the legal principles surrounding dedication of property, the public trust remains a fuzzy subject area. Maryland's highest court approved legislation reasserting state title in "lands under the navigable waters of the state below the mean high tide, which are affected by the regular rise and fall of the tide." When riparian owners claimed a right to remove sand and gravel, their claim was disapproved because of the preexisting state right defined in the statute [7].

The state cannot destroy the public trust merely by selling the land. The doctrine protects against short sighted stewardship of the public resource. In most situations when private rights are granted, the public trust can be reasserted after the passage of time or changes in the law or conditions of use.

In the Just v. Marinette County case, the Wisconsin Supreme Court was asked to review a 1966 Shoreland Protection Act ordinance that had been adopted by the county. The Just's owned lakefront lots and began filling the shorefront swamp contrary to the ordinance which required a special permit for fill [8].

The court carried the public trust notion beyond traditional navigability. It was linked to an explanation of the heavyweight purposes served by the shoreland protection program. The court emphasized the special relationship between lands adjacent to and near navigable waters:

> What makes this case different from most condemnation or policy power zoning cases is the interrelationship of the wetlands, the swamps and the natural environment of shorelands to the purity of the water and to such natural resources as navigation, fishing, and scenic beauty. Swamps and wetlands were once considered wasteland, undesirable, and not picturesque. But as the people became more sophisticated, an appreciation was acquired that swamps and wetlands serve a vital role in nature and are essential to the purity of the water in our lakes and streams. Swamps and wetlands are a necessary part of the ecological creation and now, even to the uninitiated, possess their own beauty in nature.

The court went on to cite cases supporting its conclusion that "the active public trust duty of the state of Wisconsin in respect to navigable waters requires the state not only to promote navigation but also to protect and preserve those waters for fishing recreation and scenic beauty.

Value

Value loss is an unreliable indicator of the constitutionality of a regulation, though it provides a quick reference to sources of controversy. Heavyweight nuisance abatement regulations often apply even when they result in actual cash losses or a high percentage reduction in land value. In other situations, the inability to pursue a modest improvement program may be sufficient to tip the balance against public purpose and invalidate a regulation. In coastal areas the question is further complicated by the opportunities to sidestep the constitutional issue discussed in the previous section.

The Wisconsin Supreme Court offered a lesson on the tough implications of the interaction of these factors:

> It seems to us that filling a swamp not otherwise commercially usable is not in and of itself an existing use, which is prevented, but rather is the preparation for some future use which is not indigenous to a swamp. Too much stress is laid on the right of an owner to change commercially valueless land when that change does damage to the rights of the public.
>
> The Just's argued their property has been depreciated in value. But this depreciation of value is not based on the use of the land in its natural state but on what the land would be worth if it could be filled and used for the location of a dwelling. While loss of value is to be considered in determining whether a restriction is a constructive taking, value based upon changing the character of the land at the expense of harm to public rights is not an essential factor or controlling. [9]

Other "heavyweight" situations relating to nuisance have been reviewed by the U.S. Supreme Court and it has made it clear that loss in value, even 80 percent and more, is not the sole criterion in marking constitutional limits on regulation. These situations, however, for example closing a gravel pit, do not easily translate into the ecological perspective of estuarine and wetlands management.

State courts have taken many tacks in facing the issue. A recent New Jersey discussion of wetlands management applied a "practical use" test. A permit program that allowed a number of use options if environmental standards were met did not "deny all practical use" and therefore did not overstep the constitutional limit [10].

The New Jersey decision seems to reflect the mainstream. Where there are strong declarations of public policy and a public agency cannot sidestep the constitutional question, relief is available not for a

particular degree of economic harm, but when no practical use for the property is allowed.

A successful court challenge usually results in the invalidation of the challenged regulation. Typically a property owner will not collect money as a result. To provide a compensation alternative, some states have adopted laws requiring actual compensation. This process can lead to another legal quagmire, the Catch 22 of the regulation-taking issue. Where the law requires compensation only when a regulation exceeds constitutional limits, it effectively pushes all regulated landowners into loss of development value position, and allows compensation only in those few cases where it pushed too far. The occasional compensation may be just for the individual who wins, but it provides little justice for those who fall barely outside the reach of the compensation requirement or cannot afford court review.

To review the argument, a valid regulation may result in substantial loss in value for a parcel of property. But valuation for compensation in the event the regulation oversteps the constitutional limit must ignore the regulation (it is invalid) and would usually require just compensation at the full fair market value. The results parallel the public refuge--regulated wetland analogy. Most regulated property owners receive no compensation. Those who demonstrate the extreme circumstances that justify a court finding of a "taking" (and the costs of litigation) get full compensation in the typical statutory compensation scheme. Usually no middle ground remains to soften the effect of touch but valid regulations for those who must continue to live with them.

Professor John Costomis has begun a dialogue on a judicial option for dealing with this problem in a recent article describing the "accommodation power." (Columbia Law Review, January 1976). Crudely described, the power he advocates would permit partial compensation awards by the courts in the grey area between valid regulation and clear taking for public use. In another forthcoming study, Professor Donald Hagman also explores "windfalls for wipeouts" as another approach to the compensation issue. Unless a legislative or judicial solution of this sort emerges, there is likely to be continuing controversy over the constitutional limits on regulation for wetlands and estuarine management [11].

REFERENCES

APPENDIX A

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4. Morris County Land Improvement Company v. Parsippany, 193 A.2d 232 (N.J. 1963).

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8. Just v. Marinette County, 201 N.W.2d 761 (Wisc. 1972).

9. Ibid. at 771.

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APPENDIX B

State and Local Roles in Nearshore/Onshore OCS Development Permitting[1]

Site locations in nearshore and onshore areas are significantly affected by state and local laws and regulations. The interaction of land and water requirements for a site, and the number of acres used for storage and industrial activity govern the extent of applications to state and local governments for zoning and related permits. Permits or approvals required before construction may begin typically include one or more of the following:

- o zoning use designation
- o permission to subdivide land ownership
- o certification of flood proofing and location outside highest flood hazard areas
- o wetlands conservation or impact mitigation
- o site alteration assurance to guard against erosion or drainage alteration
- o dredge and fill permit (state)

Permission under many of these types of regulations may usually be denied as a matter of state (or local) policy at any point in a sponsor's planning process before construction begins. Because of this, local assurance such as zoning approval are often sought well before applications for Federal permits are submitted.

The Tenth Amendment to the Constitution reserves this "public power" authority to the States. They in turn have assigned land use regulation primarily to local governments for the last 50 years.

Recent dramatic changes in approach are now being considered and implemented:

[1]See John Clark, Coastal Ecosystems Management (John Wiley & Sons (1977), Chapter 5.

> In attempting to cope with the myriad of problems, States have sought to regulate development by a variety of means. The States have come to realize that the dependence of local government on property taxes for support has fostered an inherent conflict when they are petitioned by the developer. The resolution of this conflict of tax base versus social, environmental, or aesthetic interests of the region also has serious political ramifications. The fact that the decisionmaking power rests in local hands does not cause these problems; the defect is that the criteria for decision-making are exclusively local, even when the interests affected are far more comprehensive.

In recent years there has been a renaissance of state initiatives to manage aspects of the development process. Well over one half the states have approved measures dealing with basic environmental problems on numerous fronts, land management receiving the greatest attention. An array of statutes imposing controls on subdivisions, wetlands, natural areas and strip mining have been passed. New statutes also include air and water pollution control, solid waste disposal, dredging, and the protection of endangered species. Many have a relatively narrow focus--agricultural lands, "critical areas" or the coastal zone.

The first major exercise of the state police power through zoning occurred in 1961 when Hawaii enacted a comprehensive statewide zoning plan. The plan eventually set up four classifications of land within the state: agricultural, conservation, urban, and rural. Under this legislation the state determined the policy for development, allowing local input in the administration of the zoning program.

Many other states have taken back the authority over privately owned coastal wetlands and require state or coordinated state-local review and permit approval for any uses that might be potentially damaging to the coastal ecosystem. These programs have a variety of declared purposes, the most prevalent of which are to conserve fish and wildlife resources, to protect ecosystems, and to control development (Table 1).

It is clear that the authority remains with the states to legislate in this way for the promotion of health, safety, and welfare of their citizens. There is no constitutional necessity for the delegation of all of the power to the local governments. The courts have consistently sustained a state's regulatory authority in the field of land management, even at the risk of circumscribing the seemingly traditional rights of the landowner or local authorities.

Regional planning commissions also exist in most metropolitan areas. They attempt to deal with the growth and development problems affecting the area they serve. Typically they group local officials who act as delegates to the regional unit. With few powers beyond consultation,

Table 1. Purposes of Wetlands and Other Coastal-Oriented Environmental Regulatory Programs of Certain States (Source: Steven Zwicky and John Clark. 1973. "Environmental Protection Motivation in Coastal Zone Land-Use Legislation." Coastal Zone Management Journal, Vol. 1, No. 1, Fall 1973)

	1. Protect wildlife, fisheries	2. Protect ecosystems	3. Control development	4. Enhance aesthetics	5. Protect life, property	6. Enhance public recreation	7. Protect water resources	8. Conserve soil resources	9. Promote commerce	10. Protect navigability	11. Public access	12. Develop resource use
California	X	X	X	X	X	X		X			X	
Connecticut	X	X		X	X	X			X	X		
Delaware	X	X	X	X		X	X	X	X	X	X	
Georgia	X	X	X			X	X	X	X	X		
Maine	X		X	X	X		X					
Maryland	X	X	X	X	X	X				X		
Massachusetts	X				X							
Mississippi		X		X		X	X		X			
New Hampshire	X							X				
New Jersey	X	X	X	X	X		X		X			
North Carolina	X				X		X	X				
Rhode Island		X	X		X							X
Virginia	X	X	X	X	X	X	X	X	X	X		
Washington	X	X	X	X		X					X	
	12	10	9	9	9	8	7	6	6	5	3	1

and frequently divided membership, these units have mainly devoted their attention to roads, airports and sewage where regional links are crucial. Certain Federal grant requirements condition requests for funds on review by a regional agency in what is referred to as the A-95 process.

In addition, many special sub-state public authorities and districts exist to handle areawide problems outside the local government structure. This proliferation of overlapping governments often adds a confusing number of voices to large scale development application reviews. The greatest power to affect land management typically remains at the local level of government.

Often the tools are in the hands of the town but in many areas of this country the county provides the planning and zoning administration. The effectiveness of the process is dependent upon the municipal or county administrative program, requiring the concerted effort and support of all officials, and citizens. The legislative body, zoning administrative officer, board of appeals, planning departments, planning board, municipal or county attorney, and the many other interested agencies have concurrent responsibilities.

APPENDIX C

Consistency Requirements of the Federal Coastal Zone Management Act of 1972. Source: Federal Coastal Zone Management Act of 1972, Section 307. As amended 1976.

COORDINATION AND COOPERATION

SEC. 307. (a) In carrying out his functions and responsibilities under this title, the Secretary shall consult with, cooperate with, and, to the maximum extent practicable, coordinate his activities with other interested Federal agencies.

(b) The Secretary shall not approve the management program submitted by a state pursuant to section 306 unless the views of Federal agencies principally affected by such program have been adequately considered.

(c)(1) Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.

(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with approved state management programs.

(3)(A) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this title or is otherwise necessary in the interest of national security.

(B) After the management program of any coastal state has been approved by the Secretary under section 306, any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land use or water use in the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with such state's approved management program and will be carried out in a manner consistent with such program. No Federal official or agency shall grant such person any license or permit for any activity described in detail in such plan until such state or its designated agency receives a copy of such certification and plan, together with any other necessary data and information, and until —

(i) such state or its designated agency, in accordance with the procedures required to be established by such state pursuant to subparagraph (A), concurs with such person's certification and notifies the Secretary and the Secretary of the Interior of such concurrence;

(ii) concurrence by such state with such certification is conclusively presumed, as provided for in subparagraph (A); or

(iii) the Secretary finds, pursuant to subparagraph (A), that each activity which is described in detail in such plan is consistent with the objectives of this title or is otherwise necessary in the interest of national security.

If a state concurs or is conclusively presumed to concur, or if the Secretary makes such a finding, the provisions of subparagraph (A) are not applicable with respect to such person, such state, and any Federal license or permit which is required to conduct any activity affecting land uses or water uses in the coastal zone of such state which is described in detail in the plan to which such concurrence or finding applies. If such state objects to such certification and if the Secretary fails to make a finding under clause (iii) with respect to such certification, or if such person fails substantially to comply with such plan as submitted, such person shall submit an amendment to such plan, or a new plan, to the Secretary of the Interior. With respect to any amendment or new plan submitted to the Secretary of the Interior pursuant to the preceding sentence, the applicable time period for purposes of concurrence by conclusive presumption under subparagraph (A) is 3 months.

(d) State and local governments submitting applications for Federal assistance under other Federal programs affecting the coastal zone shall indicate the views of the appropriate state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of title IV of the Intergovernmental Coordination Act of 1968 (82 Stat. 1098). Federal agencies shall not approve proposed projects that are inconsistent

with a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this title or necessary in the interest of national security.

(e) Nothing in this title shall be construed —

(1) to diminish either Federal or state jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources, submerged lands, or navigable waters; nor to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more states or of two or more states and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(2) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board, and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico.

(f) Notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or (2) established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable to such program.

(g) When any state's coastal zone management program, submitted for approval or proposed for modification pursuant to section 306 of this title, includes requirements as to shorelands which also would be subject to any Federally supported national land use program which may be hereafter enacted, the Secretary, prior to approving such program, shall obtain the concurrence of the Secretary of the Interior, or such other Federal official as may be designated to administer the national land use program with respect to that portion of the coastal zone management program affecting such inland areas.

(h) In case of serious disagreement between any Federal agency and a coastal state —

(1) in the development or the initial implementation of a management program under section 305; or

(2) in the administration of a management program approved under section 306;

the Secretary, with the cooperation of the Executive Office of the President, shall seek to mediate the differences involved in such disagreement. The process of such mediation shall, with respect to any disagreement described in paragraph (2), include public hearings which shall be conducted in the local area concerned.

Public Law 95-91
95th Congress

An Act

To establish a Department of Energy in the executive branch by the reorganization of energy functions within the Federal Government in order to secure effective management to assure a coordinated national energy policy, and for other purposes.

Aug. 4, 1977
[S. 826]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Department of Energy Organization Act".

Department of Energy Organization Act. 42 USC 7101 note.

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DEFINITIONS

SEC. 2. (a) As used in this Act, unless otherwise provided or indicated by the context, the term the "Department" means the Department of Energy or any component thereof, including the Federal Energy Regulatory Commission. 42 USC 7101.

(b) As used in this Act (1) reference to "function" includes reference to any duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and (2) reference to "perform", when used in relation to functions, includes the undertaking, fulfillment, or execution of any duty or obligation; and the exercise of power, authority, rights, and privileges.

(c) As used in this Act, "Federal lease" means an agreement which, for any consideration, including but not limited to, bonuses, rents, or royalties conferred and covenants to be observed, authorizes a person to explore for, or develop, or produce (or to do any or all of these) oil and gas, coal, oil shale, tar sands, and geothermal resources on lands or interests in lands under Federal jurisdiction.

TITLE I—DECLARATION OF FINDINGS AND PURPOSES

FINDINGS

SEC. 101. The Congress of the United States finds that— 42 USC 7111.

(1) the United States faces an increasing shortage of nonrenewable energy resources;

(2) this energy shortage and our increasing dependence on foreign energy supplies present a serious threat to the national security of the United States and to the health, safety and welfare of its citizens;

(3) a strong national energy program is needed to meet the present and future energy needs of the Nation consistent with overall national economic, environmental and social goals;

(4) responsibility for energy policy, regulation, and research, development and demonstration is fragmented in many departments and agencies and thus does not allow for the comprehensive, centralized focus necessary for effective coordination of energy supply and conservation programs; and

(5) formulation and implementation of a national energy program require the integration of major Federal energy functions into a single department in the executive branch.

PURPOSES

SEC. 102. The Congress therefore declares that the establishment of a Department of Energy is in the public interest and will promote the general welfare by assuring coordinated and effective administration of Federal energy policy and programs. It is the purpose of this Act— 42 USC 7112.

(1) to establish a Department of Energy in the executive branch;

(2) to achieve, through the Department, effective management of energy functions of the Federal Government, including consultation with the heads of other Federal departments and agencies in order to encourage them to establish and observe policies consistent with a coordinated energy policy, and to promote maximum possible energy conservation measures in connection with the activities within their respective jurisdictions;

(3) to provide for a mechanism through which a coordinated national energy policy can be formulated and implemented to deal with the short-, mid- and long-term energy problems of the Nation; and to develop plans and programs for dealing with domestic energy production and import shortages;

(4) to create and implement a comprehensive energy conservation strategy that will receive the highest priority in the national energy program;

(5) to carry out the planning, coordination, support, and management of a balanced and comprehensive energy research and development program, including—

(A) assessing the requirements for energy research and development;

(B) developing priorities necessary to meet those requirements;

(C) undertaking programs for the optimal development of the various forms of energy production and conservation; and

(D) disseminating information resulting from such programs, including disseminating information on the commercial feasibility and use of energy from fossil, nuclear, solar, geothermal, and other energy technologies;

(6) to place major emphasis on the development and commercial use of solar, geothermal, recycling and other technologies utilizing renewable energy resources;

(7) to continue and improve the effectiveness and objectivity of a central energy data collection and analysis program within the Department;

(8) to facilitate establishment of an effective strategy for distributing and allocating fuels in periods of short supply and to provide for the administration of a national energy supply reserve;

(9) to promote the interests of consumers through the provision of an adequate and reliable supply of energy at the lowest reasonable cost;

(10) to establish and implement through the Department, in coordination with the Secretaries of State, Treasury, and Defense, policies regarding international energy issues that have a direct impact on research, development, utilization, supply, and conservation of energy in the United States and to undertake activities involving the integration of domestic and foreign policy relating to energy, including provision of independent technical advice to the President on international negotiations involving energy resources, energy technologies, or nuclear weapons issues, except that the Secretary of State shall continue to exercise primary authority for the conduct of foreign policy relating to energy and nuclear nonproliferation, pursuant to policy guidelines established by the President;

(11) to provide for the cooperation of Federal, State, and local governments in the development and implementation of national energy policies and programs;

(12) to foster and assure competition among parties engaged in the supply of energy and fuels;

(13) to assure incorporation of national environmental protection goals in the formulation and implementation of energy programs, and to advance the goals of restoring, protecting, and enhancing environmental quality, and assuring public health and safety;

(14) to assure, to the maximum extent practicable, that the productive capacity of private enterprise shall be utilized in the development and achievement of the policies and purposes of this Act;

(15) to provide for, encourage, and assist public participation in the development and enforcement of national energy programs;

(16) to create an awareness of, and responsibility for, the fuel and energy needs of rural and urban residents as such needs pertain to home heating and cooling, transportation, agricultural production, electrical generation, conservation, and research and development;

(17) to foster insofar as possible the continued good health of the Nation's small business firms, public utility districts, municipal utilities, and private cooperatives involved in energy production, transportation, research, development, demonstration, marketing, and merchandising; and

(18) to provide for the administration of the functions of the Energy Research and Development Administration related to nuclear weapons and national security which are transferred to the Department by this Act.

RELATIONSHIP WITH STATES

SEC. 103. Whenever any proposed action by the Department conflicts with the energy plan of any State, the Department shall give due consideration to the needs of such State, and where practicable, shall attempt to resolve such conflict through consultations with appropriate State officials. Nothing in this Act shall affect the authority of any State over matters exclusively within its jurisdiction. 42 USC 7113.

TITLE II—ESTABLISHMENT OF THE DEPARTMENT

ESTABLISHMENT

SEC. 201. There is hereby established at the seat of government an executive department to be known as the Department of Energy. There shall be at the head of the Department a Secretary of Energy (hereinafter in this Act referred to as the "Secretary"), who shall be appointed by the President by and with the advice and consent of the Senate. The Department shall be administered, in accordance with the provisions of this Act, under the supervision and direction of the Secretary. 42 USC 7131.

Secretary of Energy, appointment and confirmation.

PRINCIPAL OFFICERS

SEC. 202. (a) There shall be in the Department a Deputy Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level II of the Executive Schedule under section 5313 of title 5, United States Code. The Deputy Secretary shall act for and exercise the functions of the Secretary during the absence or disability of the Secretary or in the event the office of Secretary becomes vacant. The Secretary shall designate the order in which the Under Secretary and other officials shall act for and perform the functions of the Secretary during the absence or disability of both the Secretary and Deputy Secretary or in the event of vacancies in both of those offices.

Deputy Secretary, appointment and confirmation. 42 USC 7132.

(b) There shall be in the Department an Under Secretary and a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such

Under Secretary and General Counsel, appointment and confirmation.

functions and duties as the Secretary shall prescribe. The Under Secretary shall bear primary responsibility for energy conservation. The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code, and the General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

ASSISTANT SECRETARIES

Appointment and confirmation. 42 USC 7133.

SEC. 203. (a) There shall be in the Department eight Assistant Secretaries, each of whom shall be appointed by the President, by and with the advice and consent of the Senate; who shall be compensated at the rate provided for at level IV of the Executive Schedule under section 5315 of title 5, United States Code; and who shall perform, in accordance with applicable law, such of the functions transferred or delegated to, or vested in, the Secretary as he shall prescribe in accordance with the provisions of this Act. The functions which the Secretary shall assign to the Assistant Secretaries include, but are not limited to, the following:

Functions.

(1) Energy resource applications, including functions dealing with management of all forms of energy production and utilization, including fuel supply, electric power supply, enriched uranium production, energy technology programs, and the management of energy resource leasing procedures on Federal lands.

(2) Energy research and development functions, including the responsibility for policy and management of research and development for all aspects of—

(A) solar energy resources;

(B) geothermal energy resources;

(C) recycling energy resources;

(D) the fuel cycle for fossil energy resources; and

(E) the fuel cycle for nuclear energy resources.

(3) Environmental responsibilities and functions, including advising the Secretary with respect to the conformance of the Department's activities to environmental protection laws and principles, and conducting a comprehensive program of research and development on the environmental effects of energy technologies and programs.

(4) International programs and international policy functions, including those functions which assist in carrying out the international energy purposes described in section 102 of this Act.

(5) National security functions, including those transferred to the Department from the Energy Research and Development Administration which relate to management and implementation of the nuclear weapons program and other national security functions involving nuclear weapons research and development.

(6) Intergovernmental policies and relations, including responsibilities for assuring that national energy policies are reflective of and responsible to the needs of State and local governments, and for assuring that other components of the Department coordinate their activities with State and local governments, where appropriate, and develop intergovernmental communications with State and local governments.

(7) Competition and consumer affairs, including responsibilities for the promotion of competition in the energy industry and for the protection of the consuming public in the energy policymaking

processes, and assisting the Secretary in the formulation and analysis of policies, rules, and regulations relating to competition and consumer affairs.

(8) Nuclear waste management responsibilities, including—

(A) the establishment of control over existing Government facilities for the treatment and storage of nuclear wastes, including all containers, casks, buildings, vehicles, equipment, and all other materials associated with such facilities;

(B) the establishment of control over all existing nuclear waste in the possession or control of the Government and all commercial nuclear waste presently stored on other than the site of a licensed nuclear power electric generating facility, except that nothing in this paragraph shall alter or effect title to such waste;

(C) the establishment of temporary and permanent facilities for storage, management, and ultimate disposal of nuclear wastes;

(D) the establishment of facilities for the treatment of nuclear wastes;

(E) the establishment of programs for the treatment, management, storage, and disposal of nuclear wastes;

(F) the establishment of fees or user charges for nuclear waste treatment or storage facilities, including fees to be charged Government agencies; and

(G) the promulgation of such rules and regulations to implement the authority described in this paragraph,

except that nothing in this section shall be construed as granting to the Department regulatory functions presently within the Nuclear Regulatory Commission, or any additional functions than those already conferred by law.

(9) Energy conservation functions, including the development of comprehensive energy conservation strategies for the Nation, the planning and implementation of major research and demonstration programs for the development of technologies and processes to reduce total energy consumption, the administration of voluntary and mandatory energy conservation programs, and the dissemination to the public of all available information on energy conservation programs and measures.

(10) Power marketing functions, including responsibility for marketing and transmission of Federal power.

(11) Public and congressional relations functions, including responsibilities for providing a continuing liaison between the Department and the Congress and the Department and the public.

Responsibilities, identification.

(b) At the time the name of any individual is submitted for confirmation to the position of Assistant Secretary, the President shall identify with particularity the function or functions described in subsection (a) (or any portion thereof) for which such individual will be responsible.

FEDERAL ENERGY REGULATORY COMMISSION

42 USC 7134.

SEC. 204. There shall be within the Department, a Federal Energy Regulatory Commission established by title IV of this Act (hereinafter referred to in this Act as the "Commission"). The Chairman shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code. The other members of the Commission shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of

title 5, United States Code. The Chairman and members of the Commission shall be individuals who, by demonstrated ability, background, training, or experience, are specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy.

ENERGY INFORMATION ADMINISTRATION

Establishment.
42 USC 7135.

SEC. 205. (a)(1) There shall be within the Department an Energy Information Administration to be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for in level IV of the Executive Schedule under section 5315 of title 5, United States Code. The Administrator shall be a person who, by reason of professional background and experience, is specially qualified to manage an energy information system.

(2) The Administrator shall be responsible for carrying out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information which is relevant to energy resource reserves, energy production, demand, and technology, and related economic and statistical information, or which is relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

(b) The Secretary shall delegate to the Administrator (which delegation may be on a nonexclusive basis as the Secretary may determine may be necessary to assure the faithful execution of his authorities and responsibilities under law) the functions vested in him by law relating to gathering, analysis, and dissemination of energy information (as defined in section 11 of the Energy Supply and Environmental Coordination Act of 1974) and the Administrator may act in the name of the Secretary for the purpose of obtaining enforcement of such delegated functions.

15 USC 796.

(c) In addition to, and not in limitation of the functions delegated to the Administrator pursuant to other subsections of this section, there shall be vested in the Administrator, and he shall perform, the functions assigned to the Director of the Office of Energy Information and Analysis under part B of the Federal Energy Administration Act of 1974, and the provisions of sections 53(d) and 59 thereof shall be applicable to the Administrator in the performance of any function under this Act.

15 USC 790, 790b, 790h.

(d) The Administrator shall not be required to obtain the approval of any other officer or employee of the Department in connection with the collection or analysis of any information; nor shall the Administrator be required, prior to publication, to obtain the approval of any other officer or employee of the United States with respect to the substance of any statistical or forecasting technical reports which he has prepared in accordance with law.

Annual audit.

(e) The Energy Information Administration shall be subject to an annual professional audit review of performance as described in section 55 of part B of the Federal Energy Administration Act of 1974.

15 USC 790d.

(f) The Administrator shall, upon request, promptly provide any information or analysis in his possession pursuant to this section to any other administration, commission, or office within the Department which such administration, commission, or office determines relates to the functions of such administration, commission, or office.

(g) Information collected by the Energy Information Administration shall be cataloged and, upon request, any such information shall be promptly made available to the public in a form and manner easily adaptable for public use, except that this subsection shall not require disclosure of matters exempted from mandatory disclosure by section 552(b) of title 5, United States Code. The provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974, and section 17 of the Federal Nonnuclear Energy Research and Development Act of 1974, shall continue to apply to any information obtained by the Administrator under such provisions.

Information, availability to public.

15 USC 796.

42 USC 5916.

(h)(1)(A) In addition to the acquisition, collection, analysis, and dissemination of energy information pursuant to this section, the Administrator shall identify and designate "major energy-producing companies" which alone or with their affiliates are involved in one or more lines of commerce in the energy industry so that the energy information collected from such major energy-producing companies shall provide a statistically accurate profile of each line of commerce in the energy industry in the United States.

Major energy-producing companies, identification and designation.

(B) In fulfilling the requirements of this subsection the Administrator shall—

(i) utilize, to the maximum extent practicable, consistent with the faithful execution of his responsibilities under this Act, reliable statistical sampling techniques; and

(ii) otherwise give priority to the minimization of the reporting of energy information by small business.

(2) The Administrator shall develop and make effective for use during the second full calendar year following the date of enactment of this Act the format for an energy-producing company financial report. Such report shall be designed to allow comparison on a uniform and standardized basis among energy-producing companies and shall permit for the energy-related activities of such companies—

Financial report, format.

(A) an evaluation of company revenues, profits, cash flow, and investments in total, for the energy-related lines of commerce in which such company is engaged and for all significant energy-related functions within such company;

(B) an analysis of the competitive structure of sectors and functional groupings within the energy industry;

(C) the segregation of energy information, including financial information, describing company operations by energy source and geographic area;

(D) the determination of costs associated with exploration, development, production, processing, transportation, and marketing and other significant energy-related functions within such company; and

(E) such other analyses or evaluations as the Administrator finds is necessary to achieve the purposes of this Act.

(3) The Administrator shall consult with the Chairman of the Securities and Exchange Commission with respect to the development of accounting practices required by the Energy Policy and Conservation Act to be followed by persons engaged in whole or in part in the production of crude oil and natural gas and shall endeavor to assure that the energy-producing company financial report described in paragraph (2) of this subsection, to the extent practicable and consistent with the purposes and provisions of this Act, is consistent with such accounting practices where applicable.

Accounting practices, development.
42 USC 6201 note.

(4) The Administrator shall require each major energy-producing company to file with the Administrator an energy-producing company

Annual financial report.

financial report on at least an annual basis and may request energy information described in such report on a quarterly basis if he determines that such quarterly report of information will substantially assist in achieving the purposes of this Act.

(5) A summary of information gathered pursuant to this section, accompanied by such analysis as the Administrator deems appropriate, shall be included in the annual report of the Department required by subsection (a) of section 657 of this Act.

Definitions.

(6) As used in this subsection the term—

(A) "energy-producing company" means a person engaged in:

(i) ownership or control of mineral fuel resources or nonmineral energy resources;

(ii) exploration for, or development of, mineral fuel resources;

(iii) extraction of mineral fuel or nonmineral energy resources;

(iv) refining, milling, or otherwise processing mineral fuels or nonmineral energy resources;

(v) storage of mineral fuels or nonmineral energy resources;

(vi) the generation, transmission, or storage of electrical energy;

(vii) transportation of mineral fuels or nonmineral energy resources by any means whatever; or

(viii) wholesale or retail distribution of mineral fuels, nonmineral energy resources or electrical energy;

(B) "energy industry" means all energy-producing companies; and

(C) "person" has the meaning as set forth in section 11 of the Energy Supply and Environmental Coordination Act of 1974.

(7) The provisions of section 1905 of title 18, United States Code, shall apply in accordance with its terms to any information obtained by the Administration pursuant to this subsection.

ECONOMIC REGULATORY ADMINISTRATION

42 USC 7136.

SEC. 206. (a) There shall be within the Department an Economic Regulatory Administration to be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at a rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code. Such Administrator shall be, by demonstrated ability, background, training, or experience, an individual who is specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy. The Secretary shall by rule provide for a separation of regulatory and enforcement functions assigned to, or vested in, the Administration.

(b) Consistent with the provisions of title IV, the Secretary shall utilize the Economic Regulatory Administration to administer such functions as he may consider appropriate.

COMPTROLLER GENERAL FUNCTIONS

42 USC 7137.

15 USC 771.

SEC. 207. The functions of the Comptroller General of the United States under section 12 of the Federal Energy Administration Act of 1974 shall apply with respect to the monitoring and evaluation of all functions and activities of the Department under this Act or any other Act administered by the Department.

OFFICE OF INSPECTOR GENERAL

SEC. 208. (a)(1) There shall be within the Department an Office of Inspector General to be headed by an Inspector General, who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Inspector General shall report to, and be under the general supervision of, the Secretary or, to the extent such authority is delegated, the Deputy Secretary, but shall not be under the control of, or subject to supervision by, any other officer of the Department.

Inspector General, appointment and confirmation. 42 USC 7138.

(2) There shall also be in the Office a Deputy Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Deputy shall assist the Inspector General in the administration of the Office and shall, during the absence or temporary incapacity of the Inspector General, or during a vacancy in that Office, act as Inspector General.

Deputy Inspector General, appointment and confirmation.

(3) The Inspector General or the Deputy may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(4) The Inspector General shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Audits and an Assistant Inspector General for Investigations.

Assistant Inspector General for Audits and Assistant Inspector General for Investigations, appointment.

(5) The Inspector General shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, and the Deputy Inspector General shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(b) It shall be the duty and responsibility of the Inspector General—

Duties and responsibilities.

(1) to supervise, coordinate, and provide policy direction for auditing and investigative activities relating to the promotion of economy and efficiency in the administration of, or the prevention or detection of fraud or abuse in, programs and operations of the Department;

(2) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Department for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(3) to recommend policies for, and to conduct, supervise, or coordinate relationships between the Department and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Department, and (B) the identification and prosecution of participants in such fraud or abuse;

(4) to keep the Secretary and the Congress fully and currently informed, by means of the reports required by subsection (e) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Department, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action; and

(5) to seek to coordinate his actions with the actions of the Comptroller General of the United States with a view to avoiding duplication.

Report to Secretary of Energy, Federal Energy Regulatory Commission, and Congress.

(c) The Inspector General shall, not later than March 31 of each year, submit a report to the Secretary, to the Federal Energy Regulatory Commission, and to the Congress summarizing the activities of the Office during the preceding calendar year. Such report shall include, but need not be limited to—

(1) an identification and description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of the Department disclosed by such activities;

(2) a description of recommendations for corrective action made by the Office with respect to significant problems, abuses, or deficiencies identified and described under paragraph (1);

(3) an evaluation of progress made in implementing recommendations described in the report or, where appropriate, in previous reports; and

(4) a summary of matters referred to prosecutive authorities and the extent to which prosecutions and convictions have resulted.

(d) The Inspector General shall report immediately to the Secretary, to the Federal Energy Regulatory Commission as appropriate, and, within thirty days thereafter, to the appropriate committees or subcommittees of the Congress whenever the Office becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of the Department. The Deputy and Assistant Inspectors General shall have particular responsibility for informing the Inspector General of such problems, abuses, or deficiencies.

Additional investigations and reports.

(e) The Inspector General (1) may make such additional investigations and reports relating to the administration of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary or desirable, and (2) shall provide such additional information or documents as may be requested by either House of Congress or, with respect to matters within their jurisdiction, by any committee or subcommittee thereof.

(f) Notwithstanding any other provision of law, the reports, information, or documents required by or under this section shall be transmitted to the Secretary, to the Federal Energy Regulatory Commission, if applicable, and to the Congress, or committees or subcommittees thereof, by the Inspector General without further clearance or approval. The Inspector General shall, insofar as feasible, provide copies of the reports required under subsection (c) to the Secretary and the Commission, if applicable, sufficiently in advance of the due date for the submission to Congress to provide a reasonable opportunity for comments of the Secretary and the Commission to be appended to the reports when submitted to Congress.

Additional authority.

(g) In addition to the authority otherwise provided by this section, the Inspector General, in carrying out the provisions of this section, is authorized—

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, and other material available to the Department which relate to programs and operations with respect to which the Inspector General has responsibilities under this section;

(2) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this section, which subpena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court; and

(3) to have direct and prompt access to the Secretary when necessary for any purpose pertaining to the performance of functions under this section.

OFFICE OF ENERGY RESEARCH

SEC. 209. (a) There shall be within the Department an Office of Energy Research to be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code. Director. 42 USC 7139.

(b) It shall be the duty and responsibility of the Director— Duties and responsibilities.

(1) to advise the Secretary with respect to the physical research program transferred to the Department from the Energy Research and Development Administration;

(2) to monitor the Department's energy research and development programs in order to advise the Secretary with respect to any undesirable duplication or gaps in such programs;

(3) to advise the Secretary with respect to the well-being and management of the multipurpose laboratories under the jurisdiction of the Department, excluding laboratories that constitute part of the nuclear weapons complex;

(4) to advise the Secretary with respect to education and training activities required for effective short- and long-term basic and applied research activities of the Department;

(5) to advise the Secretary with respect to grants and other forms of financial assistance required for effective short- and long-term basic and applied research activities of the Department; and

(6) to carry out such additional duties assigned to the Office by the Secretary relating to basic and applied research, including but not limited to supervision or support of research activities carried out by any of the Assistant Secretaries designated by section 203 of this Act, as the Secretary considers advantageous.

LEASING LIAISON COMMITTEE

SEC. 210. There is hereby established a Leasing Liaison Committee which shall be composed of an equal number of members appointed by the Secretary and the Secretary of the Interior. Establishment. 42 USC 7140.

TITLE III—TRANSFERS OF FUNCTIONS

GENERAL TRANSFERS

SEC. 301. (a) Except as otherwise provided in this Act, there are hereby transferred to, and vested in, the Secretary all of the functions vested by law in the Administrator of the Federal Energy Administration or the Federal Energy Administration, the Administrator of the Energy Research and Development Administration or the Energy Research and Development Administration; and the functions vested Federal Energy Administration and Energy Research and Development Administration. 42 USC 7151.

by law in the officers and components of either such Administration.

Federal Power Commission.

(b) Except as provided in title IV, there are hereby transferred to, and vested in, the Secretary the function of the Federal Power Commission, or of the members, officers, or components thereof. The Secretary may exercise any power described in section 402(a)(2) to the extent the Secretary determines such power to be necessary to the exercise of any function within his jurisdiction pursuant to the preceding sentence.

TRANSFERS FROM THE DEPARTMENT OF THE INTERIOR

42 USC 7152.

SEC. 302. (a)(1) There are hereby transferred to, and vested in, the Secretary all functions of the Secretary of the Interior under section 5

16 USC 825s.

of the Flood Control Act of 1944, and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to—

(A) the Southeastern Power Administration;

(B) the Southwestern Power Administration;

(C) the Alaska Power Administration;

(D) the Bonneville Power Administration including but not limited to the authority contained in the Bonneville Project Act

16 USC 832.

of 1937 and the Federal Columbia River Transmission System

16 USC 838 note.

Act;

(E) the power marketing functions of the Bureau of Reclamation, including the construction, operation, and maintenance of transmission lines and attendant facilities; and

(F) the transmission and disposition of the electric power and energy generated at Falcon Dam and Amistad Dam, international storage reservoir projects on the Rio Grande, pursuant to the Act

68 Stat. 255.

of June 18, 1954, as amended by the Act of December 23, 1963.

77 Stat. 475.

(2) The Southeastern Power Administration, the Southwestern Power Administration, the Bonneville Power Administration, and the Alaska Power Administration shall be preserved as separate and distinct organizational entities within the Department. Each such entity shall be headed by an Administrator appointed by the Secretary. The functions transferred to the Secretary in paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) shall be exercised by the Secretary, acting by and through such Administrators. Each such Administrator shall maintain his principal office at a place located in the region served by his respective Federal power marketing entity.

(3) The functions transferred in paragraphs (1)(E) and (1)(F) of this subsection shall be exercised by the Secretary, acting by and through a separate and distinct Administration within the Department which shall be headed by an Administrator appointed by the Secretary. The Administrator shall establish and shall maintain such regional offices as necessary to facilitate the performance of such functions. Neither the transfer of functions effected by paragraph (1)(E) of this subsection nor any changes in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allocated unless and to the extent that such change is hereafter approved by Congress.

Federal leases.

(b) There are hereby transferred to, and vested in, the Secretary the functions of the Secretary of the Interior to promulgate regulations

43 USC 1331 note.

under the Outer Continental Shelf Lands Act, the Mineral Lands Leasing Act, the Mineral Leasing Act for Acquired Lands, the Geo-

30 USC 181 note, 351 note.

thermal Steam Act of 1970, and the Energy Policy and Conservation Act, which relate to the— 30 USC 1001 note. 42 USC 6201 note.

(1) fostering of competition for Federal leases (including, but not limited to, prohibition on bidding for development rights by certain types of joint ventures);

(2) implementation of alternative bidding systems authorized for the award of Federal leases;

(3) establishment of diligence requirements for operations conducted on Federal leases (including, but not limited to, procedures relating to the granting or ordering by the Secretary of the Interior of suspension of operations or production as they relate to such requirements);

(4) setting rates of production for Federal leases; and

(5) specifying the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind.

(c) There are hereby transferred to, and vested in, the Secretary all the functions of the Secretary of the Interior to establish production rates for all Federal leases. Production rates.

(d) There are hereby transferred to, and vested in, the Secretary those functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department under the Act of May 15, 1910, and other authorities, exercised by the Bureau of Mines, but limited to— 30 USC 1, 3, 5–7.

(1) fuel supply and demand analysis and data gathering;

(2) research and development relating to increased efficiency of production technology of solid fuel minerals, other than research relating to mine health and safety and research relating to the environmental and leasing consequences of solid fuel mining (which shall remain in the Department of the Interior); and

(3) coal preparation and analysis.

ADMINISTRATION OF LEASING TRANSFERS

SEC. 303. (a) The Secretary of the Interior shall retain any authorities not transferred under section 302(b) of this Act and shall be solely responsible for the issuance and supervision of Federal leases and the enforcement of all regulations applicable to the leasing of mineral resources, including but not limited to lease terms and conditions and production rates. No regulation promulgated by the Secretary shall restrict or limit any authority retained by the Secretary of the Interior under section 302(b) of this Act with respect to the issuance or supervision of Federal leases. Nothing in section 302(b) of this Act shall be construed to affect Indian lands and resources or to transfer any functions of the Secretary of the Interior concerning such lands and resources. Federal leasing of mineral resources. 42 USC 7153. Indian lands.

(b) In exercising the authority under section 302(b) of this Act to promulgate regulations, the Secretary shall consult with the Secretary of the Interior during the preparation of such regulations and shall afford the Secretary of the Interior not less than thirty days, prior to the date on which the Department first publishes or otherwise prescribes regulations, to comment on the content and effect of such regulations. Regulations.

(c)(1) The Secretary of the Interior shall afford the Secretary not less than thirty days, prior to the date on which the Department of the Interior first publishes or otherwise prescribes the terms and conditions on which a Federal lease will be issued, to disapprove any term Terms and conditions, disapproval.

or condition of such lease which relates to any matter with respect to which the Secretary has authority to promulgate regulations under section 302(b) of this Act. No such term or condition may be included in such a lease if it is disapproved by the Secretary. The Secretary and the Secretary of the Interior may by agreement define circumstances under which a reasonable opportunity of less than thirty days may be afforded the Secretary to disapprove such terms and conditions.

(2) Where the Secretary disapproves any lease, term, or condition under paragraph (1) of this subsection he shall furnish the Secretary of the Interior with a detailed written statement of the reasons for his disapproval, and of the alternatives which would be acceptable to him.

Environmental impact statements.
42 USC 4332.

(d) The Department of the Interior shall be the lead agency for the purpose of preparation of an environmental impact statement required by section 102(2)(C) of the National Environmental Policy Act of 1969 for any action with respect to the Federal leases taken under the authority of this section, unless the action involves only matters within the exclusive authority of the Secretary.

TRANSFERS FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Energy conservation standards for new buildings.
42 USC 7154.
42 USC 6833.

SEC. 304. (a) There is hereby transferred to, and vested in, the Secretary the functions vested in the Secretary of Housing and Urban Development pursuant to section 304 of the Energy Conservation Standards for New Buildings Act of 1976, to develop and promulgate energy conservation standards for new buildings. The Secretary of Housing and Urban Development shall provide the Secretary with any necessary technical assistance in the development of such standards. All other responsibilities, pursuant to title III of the Energy Conservation and Production Act, shall remain with the Secretary of Housing and Urban Development, except that the Secretary shall be kept fully and currently informed of the implementation of the promulgated standards.

42 USC 6831 note.

(b) There is hereby transferred to, and vested in, the Secretary the functions vested in the Secretary of Housing and Urban Development pursuant to section 509 of the Housing and Urban Development Act of 1970.

12 USC 1701z-8.

COORDINATION WITH THE DEPARTMENT OF TRANSPORTATION

15 USC 2002.

SEC. 305. Section 502 of the Motor Vehicle Information and Cost Savings Act is amended at the end thereof by adding the following new subsections:

Average fuel economy standards.

"(g) The Secretary shall consult with the Secretary of Energy in carrying out his responsibilities under this section. The Secretary shall, before issuing any notice proposing under subsection (a), (b), (d), or (f) of this section, to establish, reduce, or amend an average fuel economy standard, provide the Secretary of Energy with a period of not less than ten days from the receipt of the notice during which the Secretary of Energy may, upon concluding that the proposed standard would adversely affect the conservation goals set by the Secretary of Energy, provide written comments to the Secretary concerning the impacts of the proposed standard upon those goals. To the extent that the Secretary does not revise the proposed standard to take into account any comments by the Secretary of Energy regarding the level of the proposed standard, the Secretary shall include the unaccommodated comments in the notice.

"(h) The Secretary shall, before taking action on any final standard under this section or any modification of or exemption from such standard, notify the Secretary of Energy and provide such Secretary with a reasonable period of time to comment thereon.". Notice.

TRANSFER FROM THE INTERSTATE COMMERCE COMMISSION

SEC. 306. Except as provided in title IV, there are hereby transferred to the Secretary such functions set forth in the Interstate Commerce Act and vested by law in the Interstate Commerce Commission or the Chairman and members thereof as relate to transportation of oil by pipeline. Transportation of oil by pipeline. 42 USC 7155. 49 USC prec. 1 note.

TRANSFERS FROM THE DEPARTMENT OF THE NAVY

SEC. 307. There are hereby transferred to and vested in the Secretary all functions vested by chapter 641 of title 10, United States Code, in the Secretary of the Navy as they relate to the administration of and jurisdiction over— certain naval petroleum reserves. 42 USC 7156. 10 USC 7421.

(1) Naval Petroleum Reserve Numbered 1 (Elk Hills), located in Kern County, California, established by Executive order of the President, dated September 2, 1912;

(2) Naval Petroleum Reserve Numbered 2 (Buena Vista), located in Kern County, California, established by Executive order of the President, dated December 13, 1912;

(3) Naval Petroleum Reserve Numbered 3 (Teapot Dome), located in Wyoming, established by Executive order of the President, dated April 30, 1915;

(4) Oil Shale Reserve Numbered 1, located in Colorado, established by Executive order of the President, dated December 6, 1916, as amended by Executive order dated June 12, 1919;

(5) Oil Shale Reserve Numbered 2, located in Utah, established by Executive order of the President, dated December 6, 1916; and

(6) Oil Shale Reserve Numbered 3, located in Colorado, established by Executive order of the President, dated September 27, 1924.

In the administration of any of the functions transferred to, and vested in, the Secretary by this section the Secretary shall take into consideration the requirements of national security.

TRANSFERS FROM THE DEPARTMENT OF COMMERCE

SEC. 308. There are hereby transferred to, and vested in, the Secretary all functions of the Secretary of Commerce, the Department of Commerce, and officers and components of that Department, as relate to or are utilized by the Office of Energy Programs, but limited to industrial energy conservation programs. Industrial energy conservation programs. 42 USC 7157.

NAVAL REACTOR AND MILITARY APPLICATION PROGRAMS

SEC. 309. (a) The Division of Naval Reactors established pursuant to section 25 of the Atomic Energy Act of 1954, and responsible for research, design, development, health, and safety matters pertaining to naval nuclear propulsion plants and assigned civilian power reactor programs is transferred to the Department under the Assistant Secretary to whom the Secretary has assigned the function listed in section 203(a)(2)(E), and such organizational unit shall be deemed to be an organizational unit established by this Act. 42 USC 7158. 42 USC 2035.

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42 USC 2035.
42 USC 2037.

(b) The Division of Military Application, established by section 25 of the Atomic Energy Act of 1954, and the functions of the Energy Research and Development Administration with respect to the Military Liaison Committee, established by section 27 of the Atomic Energy Act of 1954, are transferred to the Department under the Assistant Secretary to whom the Secretary has assigned those functions listed in section 203(a)(5), and such organizational units shall be deemed to be organizational units established by this Act.

TRANSFER TO THE DEPARTMENT OF TRANSPORTATION

Van pooling and carpooling.
42 USC 7159.
42 USC 6361.

SEC. 310. Notwithstanding section 301(a), there are hereby transferred to, and vested in, the Secretary of Transportation all of the functions vested in the Administrator of the Federal Energy Administration by section 381(b)(1)(B) of the Energy Policy and Conservation Act.

TITLE VI—ADMINISTRATIVE PROVISIONS

PART A—CONFLICT OF INTEREST PROVISIONS

DEFINITIONS

Supervisory employees.
42 USC 7211.
5 USC 5332 note.
5 USC 5312–5316.

SEC. 601. (a) For the purposes of this title, the following officers or employees of the Department are supervisory employees:

(1) an individual holding a position in the Department at GS–16, GS–17, or GS–18 of the General Schedule or at level I, II, III, IV, or V of the Executive Schedule, or who is in a position at a comparable or higher level on any other Federal pay scale, or who holds a position pursuant to subsection (b) or (d) of section 621, or who is an expert or consultant employed pursuant to section 3109 of title 5, United States Code, for more than ninety days in any calendar year and receives compensation at an annual rate equal to or in excess of the minimum rate prescribed for individuals at GS–16 of the General Schedule;

(2) the Director or Deputy Director of any State, regional, district, local, or other field office maintained pursuant to section 650 of this Act;

(3) an employee or officer who has primary responsibility for the award, review, modification, or termination of any grant,

contract, award, or fund transfer within the authority of the Secretary; and

(4) any other employee or officer who, in the judgment of the Secretary, exercises sufficient decisionmaking or regulatory authority so that the provisions of this title should apply to such individual.

"Energy concern."

(b) For purposes of this title the term "energy concern" includes—

(1) any person significantly engaged in the business of developing, extracting, producing, refining, transporting by pipeline, converting into synthetic fuel, distributing, or selling minerals for use as an energy source, or in the generation or transmission of energy from such minerals or from wastes or renewable resources;

(2) any person holding an interest in property from which coal, natural gas, crude oil, nuclear material or a renewable resource is commercially produced or obtained;

(3) any person significantly engaged in the business of producing, generating, transmitting, distributing, or selling electric power;

(4) any person significantly engaged in development, production, processing, sale, or distribution of nuclear materials, facilities, or technology;

(5) any person—

(A) significantly engaged in the business of conducting research, development, or demonstration related to an activity described in paragraph (1), (2), (3), or (4); or

(B) significantly engaged in conducting such research, development, or demonstration with financial assistance under any Act the functions of which are vested in or delegated or transferred to the Secretary or the Department.

List of energy concerns, publication.

(c)(1) The Secretary shall prepare and periodically publish a list of persons which the Secretary has determined to be energy concerns as defined by subsection (b). The absence of any particular energy concern from such list shall not exempt any officer or employee from the requirements of sections 602 through 606 of this Act.

(2) At the request of any officer or employee of the Department the Secretary shall determine whether any person is an energy concern as defined by subsection (b).

Energy concerns, knowledge of interest or positions.

(d) For the purposes of sections 602(a), 603(a), 605(a), and 606 an individual shall be deemed to have known of or knowingly committed a described act or to have known of or knowingly held a described interest, status, or position if the employee knew or should have known of such act, interest, status, or position. For the purposes of section 602(a) an officer or employee shall be deemed to have known of or knowingly held an interest in an energy concern if such interest is sold or otherwise transferred to his spouse or dependent while such officer or employee is, or within six months prior to the date on which such officer or employee becomes, an officer or employee of the Department. The placing of an interest under a trust by an individual shall not satisfy the requirement of section 602 or waive the requirements of section 603 as to such interest unless none of the interests placed under such trust by such individual consists of known financial interests in any energy concern.

DIVESTITURE OF ENERGY HOLDINGS BY SUPERVISORY OFFICIALS

42 USC 7212.

SEC. 602. (a) No supervisory employee shall knowingly receive compensation from, or hold any official relation with, any energy con-

cern, or own stocks or bonds of any energy concern, or have any pecuniary interest therein.

(b) Personnel transferred to the Department pursuant to section 701 of this Act shall have six months to comply with the provisions of subsection (a) with respect to prohibited property holdings. Any person transferred pursuant to section 701 of this Act shall notify the Secretary or his designee of all known circumstances which would be violative of the restrictions set forth in subsection (a) not later than thirty days after the date of such transfer, as determined by the United States Civil Service Commission. Transferred personnel, compliance. Notice.

(c) Where exceptional hardship would result, or where the interest is a pension, insurance or other similarly vested interest, the Secretary is authorized to waive the requirements of this section for such period as he may prescribe with respect to any supervisory employee covered. Such waiver shall: Waiver.

(1) be published in the Federal Register; Publication in Federal Register.

(2) contain a finding by the Secretary that exceptional hardship would result or that there is such a vested interest; and

(3) state the period of the waiver and indicate the actions taken to minimize or eliminate the conflict of interest during such period.

(d) Any supervisory employee who continues to receive income from any energy concern, or continues to own property directly or indirectly in any such concern shall disclose such income or ownership pursuant to section 603.

DISCLOSURE OF ENERGY ASSETS

SEC. 603. (a) Each individual who at any time during the calendar year serves as an officer or employee of the Department shall disclose to the Secretary— Report. 42 USC 7213.

(1) the amount of income and the identity of the source of income knowingly received by such individual, his spouse, or dependent from any energy concern, and

(2) the identity and value of interest knowingly held in any such concern

during such calendar year. Such report shall be filed not later than thirty days after commencing service in the Department and on May 15 following each such calendar year. Each report under this subsection shall be in such form and manner as the Secretary shall, by rule, prescribe.

(b) The Secretary shall—

(1) act, within ninety days after the effective date of this Act, by rule to establish the methods by which the requirement to file written statements specified in subsection (a) will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements, for the recording by the reviewing official of any action taken to eliminate any potential conflict, and for the signing of such statement by the reviewing official; and

(2) include, as part of the report made pursuant to section 657, a report with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) In the rules prescribed in subsection (b), the Secretary shall identify specific positions, or classes thereof, within the Department which are of a nonregulatory or nonpolicymaking nature at or below GS-12 of the General Schedule and shall exempt such positions and Exempt positions. 5 USC 5332 note.

the individuals occupying those positions from the requirements of this section.

(d) Each individual required to file a report under this section who during any calendar year ceases to be an officer or employee of the Department shall file a report covering that portion of such year beginning on January 1 and ending on the date on which he ceases to be such an officer or employee, and such report shall be filed with the Secretary not later than thirty days after such date.

Extension.

(e) The Secretary may grant one or more reasonable extensions of time for filing any such report under this section but the total of such extensions shall not exceed ninety days.

REPORT ON PRIOR EMPLOYMENT

42 USC 7214.

SEC. 604. (a) Within sixty days of becoming a supervisory employee of the department, each supervisory employee shall file with the Secretary, in such form and manner as the Secretary shall prescribe, a report identifying any energy concern which paid the reporting individual compensation in excess of $2,500 in any of the previous five calendar years. The individual shall include in the report—

Contents.

(1) the name and address of each source of such compensation;

(2) the period during which the reporting individual was receiving such compensation from each such source;

(3) the title of each position or relationship the reporting individual held with each compensating source; and

(4) a brief description of the duties performed or services rendered by the reporting individual in each such position.

Exceptions.

(b) Subsection (a) shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, recognized by law, between such individual and any person; nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

POSTEMPLOYMENT PROHIBITIONS AND REPORTING REQUIREMENTS

42 USC 7215.

SEC. 605. (a)(1) Except as provided in paragraph (2) or (3), no supervisory employee shall, within one year after his employment with the Department has ceased, knowingly—

(A) make any appearance or attendance before, or

(B) make any written or oral communication to, and with the intent to influence the action of;

the Department if such appearance or communication relates to any particular matter which is pending before the Department.

Exceptions.

(2) Paragraph (1) shall not apply to any appearance, attendance, or communication made, during any part of such year that such individual is employed by, and is on behalf of, the United States; nor shall it apply to an appearance or communication by the former supervisory employee where such appearance or communication is made in response to a subpena, or concerns any matter of an exclusively personal and individual nature such as pension benefits.

National interest exception. Publication in Federal Register

(3) Paragraph (1) shall not prohibit a former supervisory employee with outstanding scientific or technological qualifications from making any appearance, attendance, or written or oral communica-

tion in connection with a particular matter in a scientific or technological field if the Secretary or the Commission, as the case may be, makes a certification in writing, published in the Federal Register, that the national interest would be served by such action or appearance by such former supervisory employee.

(b)(1) Each former supervisory employee of the Department shall file with the Secretary, in such form and manner as the Secretary shall prescribe, not later than May 15 of the first and second calendar years following the first full year in which such person ceased to be an officer or employee of the Department, a report describing any employment with any energy concern during the period to which such report relates, including any employment as a consultant, agent, attorney, or otherwise, except that the requirements of this subsection shall not apply to any former supervisory employee who, at the time such employment with the Department ceases, has any contract, promise, or other agreement with respect to future employment with any energy concern, if (A) the former supervisory employee describes such agreement in any report filed within thirty days after the individual ceases to be an employee of the Department, and (B) the former supervisory employee amends the report by May 15 of either of the next two years during which he has accepted employment with another energy concern. Report.

(2) Each report filed pursuant to paragraph (1) of this subsection shall contain the name and address of the person filing the report, the name and address of the energy concern with which he holds or will hold employment during any portion of the period covered by the report, a brief description of his responsibilities for the energy concern, the dates of his employment, and such other pertinent information as the Secretary may require. Contents.

PARTICIPATION PROHIBITIONS

SEC. 606. (a) For a period of one year after terminating any employment with any energy concern, no supervisory employee shall knowingly participate in any Department proceeding in which his former employer is substantially, directly, or materially involved, other than in a rulemaking proceeding which has a substantial effect on numerous energy concerns. 42 USC 7216.

(b) For a period of one year after commencing service in the Department, no supervisory employee shall knowingly participate in any Department proceeding for which, within the previous five years, he had direct responsibility, or in which he participated substantially or personally, while in the employment of any energy concern.

(c) Whenever the Secretary makes a written finding as to a particular supervisory employee that the application of a particular restriction or requirement imposed by subsection (a) or (b) in a particular circumstance would work an exceptional hardship upon such supervisory employee or would be contrary to the national interest, the Secretary may waive in writing such restriction or requirement as to such supervisory employee. Any waiver made by the Secretary of a restriction imposed under subsection (b) shall also be filed with any record of the Department proceeding as to which the waiver for purposes of participation is granted. No such waiver shall in any instance constitute a waiver of the requirements of section 207 of title 18, United States Code. Waiver.

PROCEDURES APPLICABLE TO REPORTS

Reports, availability to public. 42 USC 7217.

SEC. 607. (a)(1) Except as provided in this section, the Secretary shall make each report filed with him under section 603, 604, or 605 available to the public within thirty days after the receipt of such report, and shall provide a copy of any such report to any person upon written request.

Fee.

(2) The Secretary may require any person receiving a copy of any report to pay a reasonable fee in any amount which the Secretary finds necessary to recover the cost of reproduction or mailing of such report, excluding any salary of any employee involved in such reproduction or mailing. The Secretary may furnish a copy of any such report without charge, or at a reduced charge, if he determines that waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the public.

(3) Any report received by the Secretary shall be held in his custody and made available to the public for a period of six years after receipt by the Secretary of such report. After such six-year period, the Secretary shall destroy any such report.

Audit.

(b) The Civil Service Commission shall, under such regulations as are prescribed by the Commission, conduct, on a random basis, a sufficient number of audits of the reports filed pursuant to sections 603, 604, and 605, as deemed necessary and appropriate in order to monitor the accuracy and completeness of such reports.

Findings and waivers file, availability to public.

(c) The Secretary shall maintain a file containing all findings and waivers made by him pursuant to section 602(c), 603(c), 605(a), or 606(c) and all such findings and waivers shall be available for public inspection and copying at all times during regular working hours in accordance with the procedures of this section.

SANCTIONS

42 USC 7218.

SEC. 608. (a) Any individual who is subject to, and knowingly violates, section 603 shall be fined not more than $2,500 or imprisoned not more than one year, or both.

(b) Any individual who violates section 602, 603, 604, 605, or 606 shall be subject to a civil penalty, assessed by the Secretary in accordance with applicable law or by any district court of the United States, not to exceed $10,000 for each violation.

(c) Notwithstanding any penalty imposed under subsection (a), any violation of section 605(a) shall be taken into consideration in deciding the outcome of any Department proceeding in connection with which the prohibited appearance, attendance, communication, or submission was made.

(d) Nothing in this title shall be deemed to limit the operation of section 207 or section 208 of title 18, United States Code. Nor shall any waiver issued pursuant to section 602(c) constitute a waiver of the requirements of such provision.

PART B—PERSONNEL PROVISIONS

OFFICERS AND EMPLOYEES

42 USC 7231.

SEC. 621. (a) In the performance of his functions the Secretary is authorized to appoint and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out such functions. Except as otherwise provided in this section, such officers

and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5, United States Code.

(b)(1) Subject to the limitations provided in paragraph (2) and to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint not more than three hundred eleven of the scientific, engineering, professional, and administrative personnel of the department without regard to the civil service laws, and may fix the compensation of such personnel not in excess of the maximum rate payable for GS–18 of the General Schedule under section 5332 of title 5, United States Code. 5 USC 5332 note.

(2) The Secretary's authority under this subsection to appoint an individual to such a position without regard to the civil service laws shall cease—

(A) when a person appointed, within four years after the effective date of this Act, to fill such position under paragraph (1) leaves such position, or

(B) on the day which is four years after such effective date, whichever is later.

(c)(1) Subject to the provisions of chapter 51 of title 5, United States Code, but notwithstanding the last two sentences of section 5108(a) of such title, the Secretary may place at GS–16, GS–17, and GS–18, not to exceed one hundred seventy-eight positions of the positions subject to the limitation of the first sentence of section 5108(a) of such title. 5 USC 5101.

(2) Appointments under this subsection may be made without regard to the provisions of sections 3324 of title 5, United States Code, relating to the approval by the Civil Service Commission of appointments under GS–16, GS–17, and GS–18 if the individual placed in such position is an individual who is transferred in connection with a transfer of functions under this Act and who, immediately before the effective date of this Act, held a position and duties comparable to those of such position.

(3) The Secretary's authority under this subsection with respect to any position shall cease when the person first appointed to fill such position leaves such position.

(d) In addition to the number of positions which may be placed at GS–16, GS–17, and GS–18 under section 5108 of title 5, United States Code, under existing law, or under this Act and to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint not more than two hundred of the scientific, engineering, professional, and administrative personnel without regard to the civil service laws and may fix the compensation of such personnel not in excess of the maximum rate payable for GS–18 of the General Schedule under section 5332 of title 5, United States Code.

(e) For the purposes of determining the maximum aggregate number of positions which may be placed at GS–16, GS–17, or GS–18 under section 5108(a) of title 5, United States Code, 63 percent of the positions established under subsections (b) and (c) shall be deemed GS–16 positions, 25 percent of such positions shall be deemed GS–17 positions, and 12 percent of such positions shall be deemed GS–18.

SENIOR POSITIONS

SEC. 622. In addition to those positions created by title II of this Act, there shall be within the Department fourteen additional officers in positions authorized by section 5316 of title 5, United States Code, who shall be appointed by the Secretary and who shall perform such functions as the Secretary shall prescribe from time to time. 42 USC 7232. *Ante*, p. 569.

EXPERTS AND CONSULTANTS

42 USC 7233. SEC. 623. The Secretary may obtain services as authorized by section 3109 of title 5, United States Code, at rates not to exceed the daily rate prescribed for grade GS–18 of the General Schedule under section 5 USC 5332 note. 5332 of title 5, United States Code, for persons in Government service employed intermittently.

ADVISORY COMMITTEES

Establishment. 42 USC 7234. 5 USC app. I. SEC. 624. (a) The Secretary is authorized to establish in accordance with the Federal Advisory Committee Act such advisory committees as he may deem appropriate to assist in the performance of his functions. Members of such advisory committees, other than full-time employees of the Federal Government, while attending meetings of such committees or while otherwise serving at the request of the Secretary while serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government serving without pay.

Meetings. 15 USC 776. (b) Section 17 of the Federal Energy Administration Act of 1974 shall be applicable to advisory committees chartered by the Secretary, or transferred to the Secretary or the Department under this Act, except that where an advisory committee advises the Secretary on matters pertaining to research and development, the Secretary may determine that such meeting shall be closed because it involves research and development matters and comes within the exemption of section 552b(c)(4) of title 5, United States Code.

ARMED SERVICES PERSONNEL

42 USC 7235. SEC. 625. (a) The Secretary is authorized to provide for participation of Armed Forces personnel in carrying out functions authorized to be performed, on the date of enactment of this Act, in the Energy Research and Development Administration and under chapter 641 of 10 USC 7421 *et seq.* title 10, United States Code. Members of the Armed Forces may be detailed for service in the Department by the Secretary concerned (as such term is defined in section 101 of such title) pursuant to cooperative agreements with the Secretary.

(b) The detail of any personnel to the Department under this section shall in no way affect status, office, rank, or grade which officers or enlisted men may occupy or hold or any emolument, perquisite, right, privilege, or benefit incident to, or arising out of, such status, office, rank, or grade. Any member so detailed shall not be charged against any statutory or other limitation or strengths applicable to the Armed Forces, but shall be charged to such limitations as may be applicable to the Department. A member so detailed shall not be subject to direction or control by his armed force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which detailed.

PART C—GENERAL ADMINISTRATIVE PROVISIONS

GENERAL AUTHORITY

42 USC 7251. SEC. 641. To the extent necessary or appropriate to perform any function transferred by this Act, the Secretary or any officer or employee of the Department may exercise, in carrying out the function so transferred, any authority or part thereof available by law,

including appropriation Acts, to the official or agency from which such function was transferred.

DELEGATION

SEC. 642. Except as otherwise expressly prohibited by law, and except as otherwise provided in this Act, the Secretary may delegate any of his functions to such officers and employees of the Department as he may designate, and may authorize such successive redelegations of such functions within the Department as he may deem to be necessary or appropriate. 42 USC 7252.

REORGANIZATION

SEC. 643. The Secretary is authorized to establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem to be necessary or appropriate. Such authority shall not extend to the abolition of organizational units or components established by this Act, or to the transfer of functions vested by this Act in any organizational unit or component. 42 USC 7253.

RULES

SEC. 644. The Secretary is authorized to prescribe such procedural and administrative rules and regulations as he may deem necessary or appropriate to administer and manage the functions now or hereafter vested in him. 42 USC 7254.

SUBPENA

SEC. 645. For the purpose of carrying out the provisions of this Act, the Secretary, or his duly authorized agent or agents, shall have the same powers and authorities as the Federal Trade Commission under section 9 of the Federal Trade Commission Act with respect to all functions vested in, or transferred or delegated to, the Secretary or such agents by this Act. 42 USC 7255. 15 USC 49.

CONTRACTS

SEC. 646. (a) The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reimbursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary. 42 USC 7256.

(b) Notwithstanding any other provision of this title, no authority to enter into contracts or to make payments under this title shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

ACQUISITION AND MAINTENANCE OF PROPERTY

SEC. 647. The Secretary is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain laboratories, research and testing sites and facilities, quarters and related accommodations for employees and dependents of employees of the Department, personal property (including patents), or any interest therein, as the Secretary deems necessary; and to provide by contract or otherwise for eating facilities and other necessary facilities for the health and welfare of employees of the Department at its installations and purchase and maintain equipment therefor. 42 USC 7257.

FACILITIES CONSTRUCTION

42 USC 7258.

SEC. 648. (a) As necessary and when not otherwise available, the Secretary is authorized to provide for, construct, or maintain the following for employees and their dependents stationed at remote locations:

(1) Emergency medical services and supplies;

(2) Food and other subsistence supplies;

(3) Messing facilities;

(4) Audio-visual equipment, accessories, and supplies for recreation and training;

Reimbursement.

(5) Reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;

(6) Living and working quarters and facilities; and

Educational transportation.

(7) Transportation of schoolage dependents of employees to the nearest appropriate educational facilities.

Reasonable prices.

(b) The furnishing of medical treatment under paragraph (1) of subsection (a) and the furnishing of services and supplies under paragraphs (2) and (3) of subsection (a) shall be at prices reflecting reasonable value as determined by the Secretary.

Reimbursement proceeds, use.

(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary to pay directly the cost of such work or services, to repay or make advances to appropriations of funds which will initially bear all or a part of such cost, or to refund excess sums when necessary. Such payments may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 653 of this Act, and used under the law governing such fund, if the fund is available for use by the Department for performing the work or services for which payment is received.

USE OF FACILITIES

U.S. and foreign government facilities.
42 USC 7259.

SEC. 649. (a) With their consent, the Secretary and the Federal Energy Regulatory Commission may, with or without reimbursement, use the research, equipment, and facilities of any agency or instrumentality of the United States or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or of any political subdivision thereof, or of any foreign government, in carrying out any function now or hereafter vested in the Secretary or the Commission.

(b) In carrying out his functions, the Secretary, under such terms, at such rates, and for such periods not exceeding five years, as he may deem to be in the public interest, is authorized to permit the use by public and private agencies, corporations, associations, or other organizations or by individuals of any real property, or any facility, structure, or other improvement thereon, under the custody of the Secretary for Department purposes. The Secretary may require permittees under this section to recondition and maintain, at their own expense, the real property, facilities, structures, and improvements involved to a satisfactory standard. This section shall not apply to excess property as defined in 3(e) of the Federal Property and Administrative Services Act of 1949.

40 USC 472.

Reimbursement proceeds, use.

(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary or the head of the agency or instrumentality of the United States

involved, as the case may be, to pay directly the costs of the equipment, or facilities provided, to repay or make advances to appropriations or funds which do or will initially bear all or a part of such costs, or to refund excess sums when necessary, except that such proceeds may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 653 of this Act, and used under the law governing such fund, if the fund is available for use for providing the equipment or facilities involved.

FIELD OFFICES

SEC. 650. The Secretary is authorized to establish, alter, consolidate or discontinue and to maintain such State, regional, district, local or other field offices as he may deem to be necessary to carry out functions vested in him. 42 USC 7260.

COPYRIGHTS

SEC. 651. The Secretary is authorized to acquire any of the following described rights if the property acquired thereby is for use by or for, or useful to, the Department: 42 USC 7261.

(1) copyrights, patents, and applications for patents, designs, processes, and manufacturing data;

(2) licenses under copyrights, patents, and applications for patents; and

(3) releases, before suit is brought, for past infringement of patents or copyrights.

GIFTS AND BEQUESTS

SEC. 652. The Secretary is authorized to accept, hold, administer, and utilize gifts, bequests, and devises of property, both real and personal, for the purpose of aiding or facilitating the work of the Department. Gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be disbursed upon the order of the Secretary. Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift, bequest, or devise. For the purposes of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift, bequest, or devise to the United States. 42 USC 7262.

CAPITAL FUND

SEC. 653. The Secretary is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interests of economy and efficiency, including such services as a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its agencies; central messenger, mail, telephone, and other communications services; office space, central services for document reproduction, and for graphics and visual aids; and a central library service. The capital of the fund shall consist of any appropriations made for the purpose of providing capital (which appropriations are hereby authorized) and the fair and reasonable value of such stocks Establishment. 42 USC 7263. Contents.

of supplies, equipment, and other assets and inventories on order as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations. Such funds shall be reimbursed in advance from available funds of agencies and offices in the Department, or from other sources, for supplies and services at rates which will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the United States Treasury as miscellaneous receipts any surplus found in the fund (all assets, liabilities, and prior losses considered) above the amounts transferred or appropriated to establish and maintain said fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund, in such amounts as may be necessary to provide additional working capital, are authorized.

Transfers.

SEAL OF DEPARTMENT

42 USC 7264.

SEC. 654. The Secretary shall cause a seal of office to be made for the Department of such design as he shall approve and judicial notice shall be taken of such seal.

REGIONAL ENERGY ADVISORY BOARDS

Establishment.
42 USC 7265.

SEC. 655. (a) The Governors of the various States may establish Regional Energy Advisory Boards for their regions with such membership as they may determine.

Observers.

(b) Representatives of the Secretary, the Secretary of Commerce, the Secretary of the Interior, the Chairman of the Council on Environmental Quality, the Commandant of the Coast Guard and the Administrator of the Environmental Protection Agency shall be entitled to participate as observers in the deliberations of any Board established pursuant to subsection (a) of this section. The Federal Cochairman of the Appalachian Regional Commission or any regional commission under title V of the Public Works and Economic Development Act shall be entitled to participate as an observer in the deliberations of any such Board which contains one or more States which are members of such Commission.

42 USC 3181.

Recommendations.

(c) Each Board established pursuant to subsection (a) may make such recommendations as it determines to be appropriate to programs of the Department having a direct effect on the region.

(d) If any Regional Advisory Board makes specific recommendations pursuant to subsection (c), the Secretary shall, if such recommendations are not adopted in the implementation of the program, notify the Board in writing of his reasons for not adopting such recommendations.

DESIGNATION OF CONSERVATION OFFICERS

42 USC 7266.

SEC. 656. The Secretary of Defense, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Agriculture, the Secretary of the Interior, the United States Postal Service, and the Administrator of General Services shall each designate one Assistant Secretary or

Assistant Administrator, as the case may be, as the principal conservation officer of such Department or of the Administration. Such designated principal conservation officer shall be principally responsible for planning and implementation of energy conservation programs by such Department or Administration and principally responsible for coordination with the Department of Energy with respect to energy matters. Each agency, Department or Administration required to designate a principal conservation officer pursuant to this section shall periodically inform the Secretary of the identity of such conservation officer, and the Secretary shall periodically publish a list identifying such officers. List, publication.

ANNUAL REPORT

SEC. 657. The Secretary shall, as soon as practicable after the end of each fiscal year, commencing with the first complete fiscal year following the effective date of this Act, make a report to the President for submission to the Congress on the activities of the Department during the preceding fiscal year. Such report shall include a statement of the Secretary's goals, priorities, and plans for the Department, together with an assessment of the progress made toward the attainment of those goals, the effective and efficient management of the Department, and progress made in coordination of its functions with other departments and agencies of the Federal Government. In addition, such report shall include the information required by section 15 of the Federal Energy Administration Act of 1974, section 307 of the Energy Reorganization Act of 1974, and section 15 of the Federal Nonnuclear Energy Research and Development Act of 1974, and shall include: Report to President for transmittal to Congress. 42 USC 7267., Contents. 15 USC 774. 42 USC 5877. 42 USC 5914.

(1) projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation, including a comprehensive summary of data pertaining to all fuel and energy needs of residents of the United States residing in— Energy needs.

(A) areas outside standard metropolitan statistical areas; and

(B) areas within such areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas;

(2) an estimate of (A) the domestic and foreign energy supply on which the United States will be expected to rely to meet such needs in an economic manner with due regard for the protection of the environment, the conservation of natural resources, and the implementation of foreign policy objectives, and (B) the quantities of energy expected to be provided by different sources (including petroleum, natural and synthetic gases, coal, uranium, hydroelectric, solar, and other means) and the expected means of obtaining such quantities; Energy supply.

(3) current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation; Trends.

(4) a summary of research and development efforts funded by the Federal Government to develop new technologies, to forestall energy shortages, to reduce waste, to foster recycling, to encour- Research and Development.

age conservation practices, and to increase efficiency; and further such summary shall include a description of the activities the Department is performing in support of environmental, social, economic and institutional, biomedical, physical and safety research, development, demonstration, and monitoring activities necessary to guarantee that technological programs, funded by the Department, are undertaken in a manner consistent with and capable of maintaining or improving the quality of the environment and of mitigating any undesirable environmental and safety impacts;

(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal/State, and local governments and nongovernmental entities to achieve the purposes of this Act;

Recommendations.

(6) a summary of cooperative and voluntary efforts that have been mobilized to promote conservation and recycling, together with plans for such efforts in the succeeding fiscal year, and recommendations for changes in laws and regulations needed to encourage more conservation and recycling by all segments of the Nation's populace;

(7) a summary of substantive measures taken by the Department to stimulate and encourage the development of new manpower resources through the Nation's colleges and universities and to involve these institutions in the execution of the Department's research and development programs; and

Foreign entities operating in the U.S., activity summary.

(8) to the extent practicable, a summary of activities in the United States by companies or persons which are foreign owned or controlled and which own or control United States energy sources and supplies, including the magnitude of annual foreign direct investment in the energy sector in the United States and exports of energy resources from the United States by foreign owned or controlled business entities or persons, and such other related matters as the Secretary may deem appropriate.

LEASING REPORT

Submittal to Congress.
42 USC 7268.

SEC. 658. The Secretary of the Interior shall submit to the Congress not later than one year after the date of enactment of this Act, a report on the organization of the leasing operations of the Federal Government, together with any recommendations for reorganizing such functions may deem necessary or appropriate.

TRANSFER OF FUNDS

42 USC 7269.

SEC. 659. The Secretary, when authorized in an appropriation Act, in any fiscal year, may transfer funds from one appropriation to another within the Department, except that no appropriation shall be either increased or decreased pursuant to this section by more than 5 per centum of the appropriation for such fiscal year.

AUTHORIZATION OF APPROPRIATIONS

42 USC 7270.

SEC. 660. Appropriations to carry out the provisions of this Act shall be subject to annual authorization.

TITLE VII—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL

SEC. 701. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions transferred by this Act, subject to section 202 of the Budget and Accounting Procedure Act of 1950, are hereby transferred to the Secretary for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall only be used for the purposes for which the funds were originally authorized and appropriated. 42 USC 7291. 31 USC 581c.

(b) Positions expressly specified by statute or reorganization plan to carry out function transferred by this Act, personnel occupying those positions on the effective date of this Act, and personnel authorized to receive compensation in such positions at the rate prescribed for offices and positions at level I, II, III, IV, or V of the executive schedule (5 U.S.C. 5312–5316) on the effective date of this Act, shall be subject to the provisions of section 703 of this Act.

EFFECT ON PERSONNEL

SEC. 702. (a) Except as otherwise provided in this Act, the transfer pursuant to this title of full-time personnel (except special Government employees) and part-time personnel holding permanent positions pursuant to this title shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of enactment of this Act, except that full-time temporary personnel employed at the Energy Research Centers of the Energy Research and Development Administration upon the establishment of the Department who are determined by the Department to be performing continuing functions may at the employee's option be converted to permanent full-time status within one hundred and twenty days following their transfer to the Department. The employment levels of full-time permanent personnel authorized for the Department by other law or administrative action shall be increased by the number of employees who exercise the option to be so converted. 42 USC 7292.

(b) Any person who, on the effective date of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position, for the duration of his service in the new position. 5 USC 5301.

(c) Employees transferred to the Department holding reemployment rights acquired under section 28 of the Federal Energy Administration Act of 1974 or any other provision of law or regulation may exercise such rights only within one hundred twenty days from the effective date of this Act or within two years of acquiring such rights, whichever is later. Reemployment rights may only be exercised at the request of the employee. 15 USC 786.

AGENCY TERMINATIONS

42 USC 7293. SEC. 703. Except as otherwise provided in this Act, whenever all of the functions vested by law in any agency, commission, or other body, or any component thereof, have been terminated or transferred from that agency, commission, or other body, or component by this Act, the agency, commission, or other body, or component, shall terminate. If an agency, commission, or other body, or any component thereof, terminates pursuant to the preceding sentence, each position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313–5316), shall terminate.

INCIDENTAL TRANSFERS

42 USC 7294. SEC. 704. The Director of the Office of Management and Budget, in consultation with the Secretary and the Commission, is authorized and directed to make such determinations as may be necessary with regard to the transfer of functions which relate to or are utilized by an agency, commission or other body, or component thereof affected by this Act, to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with the functions transferred by this Act, as he may deem necessary to accomplish the purposes of this Act.

SAVINGS PROVISIONS

42 USC 7295. SEC. 705. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this Act to the Department or the Commission after the date of enactment of this Act, and

(2) which are in effect at the time this Act takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary, the Federal Energy Regulatory Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.

(b)(1) The provisions of this Act shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending at the time this Act takes effect before any department, agency, commission, or component thereof, functions of which are transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any

such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Secretary and the Commission are authorized to promulgate regulations providing for the orderly transfer of such proceedings to the Department or the Commission. Regulations.

(c) Except as provided in subsection (e)—

(1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect, and,

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency, functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act.

(e) If, before the date on which this Act takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this Act any function of such department, agency, or officer is transferred to the Secretary or any other official, then such suit shall be continued with the Secretary or other official, as the case may be, substituted.

SEPARABILITY

SEC. 706. If any provision of this Act or the application thereof to any person or circumstance is held invalid, neither the remainder of this Act nor the application of such provision to other persons or circumstances shall be affected thereby. 42 USC 7296.

REFERENCE

SEC. 707. With respect to any functions transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, the Federal Energy Regulatory Commission, or other official or component of the Department in which this Act vests such functions. 42 USC 7297.

PRESIDENTIAL AUTHORITY

SEC. 708. Except as provided in title IV, nothing contained in this Act shall be construed to limit, curtail, abolish, or terminate any function of, or authority available to, the President which he had immediately before the effective date of this Act; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions. 42 USC 7298.

AMENDMENTS

SEC. 709. (a) The Federal Energy Administration Act of 1974 is amended: 15 USC 761 note.

(1) by repealing sections 4, 9, 28, and 30; Repeals. 15 USC 763, 768, 786, 761 note.

(2) in section 7—

(A) by striking out subsections (a) and (b) and redesignating subsection (c) as subsection (a); 15 USC 766.

15 USC 766.

(B) by striking out subsections (d), (e), (f), (g), and (h);

(C) by striking out "(i)(1)" and by striking out subparagraphs (A), (B), (C), (E), and (F) of subsection (i)(1) and redesignating subparagraph (D) of such subsection as subsection (b);

(D) by striking out, in the matter redesignated as subsection (b), "the rules, regulations, or orders described in paragraph (A)" and inserting in lieu thereof "any rule or regulation, or any order having the applicability and effect of a rule as defined in section 551(4) of title 5, United States Code, pursuant to this Act";

(E) by striking out, in such subsection, "paragraph (2) of this subsection" and inserting in lieu thereof "subsection (c)";

(F) by redesignating paragraph (2)(A) of subsection (i) as subsection (c) and by striking out subparagraph (B) of subsection (i)(2); and

(G) by striking out paragraph (3) of subsection (i) and by striking out subsections (j) and (k);

15 USC 790a.

(3) in section 52(a)—

(A) by striking out "and" at the end of paragraph (2);

(B) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(C) by adding after such paragraph (3) the following new paragraph:

15 USC 717w. 16 USC 791a.

"(4) the States to the extent required by the Natural Gas Act and the Federal Power Act."; and

15 USC 790d.

(4) in section 55(b)—

(A) by striking out "seven" and inserting in lieu thereof "six";

(B) by inserting "and" after "Federal Trade Commission:"; and

(C) by striking out "one shall be designated by the Chairman of the Federal Power Commission; and".

Repeal. 42 USC 5818.

(b) The Energy Reorganization Act of 1974 is amended by repealing section 108.

Repeal. 42 USC 2036.

(c)(1) The Atomic Energy Act of 1954 is amended by repealing section 26.

42 USC 2201 note.

(2) Section 161(d) of the Atomic Energy Act of 1954 shall not apply to functions transferred by this Act.

12 USC 1701z-8.

(d) In section 509 (c)(6) and (e) of title 5 of the Housing and Urban Development Act of 1970, add "the Secretary of Housing and Urban Development," to those individuals and agencies with whom the Secretary of the Department of Energy must consult.

(e) The Energy Conservation Standards for New Buildings Act of 1976 is amended as follows:

42 USC 6833.

(1) in section 304(c), by inserting "the Secretary of Housing and Urban Development," after "the Administrator,"; and

42 USC 6839.

(2) in section 310, by inserting "Secretary of Housing and Urban Development," after "the Administrator,".

Loans, criteria.

(f) The Rural Electrification Act of 1936 is amended by adding a new section 16 to title I thereof to read as follows:

7 USC 916.

"SEC. 16. In order to insure coordination of electric generation and transmission financing under this Act with the national energy policy, the Administrator in making or guaranteeing loans for the construction, operation, or enlargement of generating plants or electric transmission lines or systems, shall consider such general criteria consistent

with the provisions of this Act as may be published by the Secretary of Energy.".

(g) Section 19(d)(1) of title 3, United States Code, is amended by inserting immediately before the period at the end thereof the following: ", Secretary of Energy".

ADMINISTRATIVE AMENDMENTS

SEC. 710. (a) Section 101 of title 5, United States Code is amended by adding at the end thereof the following:

"The Department of Energy.".

(b) Subsection (a) of section 5108 of title 5, United States Code, is amended by striking out "an aggregate of 2,754" and inserting in lieu thereof "an aggregate of 3,243".

(c) Section 5312 of title 5, United States Code, is amended by adding at the end thereof the following:

"(14) Secretary of Energy.".

(d) Paragraph (22) of section 5313 of title 5, United States Code, is amended to read as follows:

"(22) Deputy Secretary of Energy.".

(e) Section 5314 of title 5, United States Code, is amended by striking out, in paragraph (21), "Federal Power Commission" and by inserting in lieu thereof "Federal Energy Regulatory Commission", and by amending paragraph (60) to read as follows:

"(60) Under Secretary, Department of Energy".

(f) Section 5315 of title 5, United States Code, is amended by striking out, in paragraph (60), "Federal Power Commission" and inserting in lieu thereof "Federal Energy Regulatory Commission", by striking out paragraph 102, and by adding at the end of the section the following:

"(114) Assistant Secretaries of Energy (8).

"(115) General Counsel of the Department of Energy.

"(116) Administrator, Economic Regulatory Administration, Department of Energy.

"(117) Administrator, Energy Information Administration, Department of Energy.

"(118) Inspector General, Department of Energy.

"(119) Director, Office of Energy Research, Department of Energy.".

(g) Paragraphs (135) and (136) of section 5316 of title 5, United States Code, are amended to read as follows:

"(135) Deputy Inspector General, Department of Energy.

"(136) Additional Officers, Department of Energy (14).".

TRANSITION

SEC. 711. With the consent of the appropriate department or agency head concerned, the Secretary is authorized to utilize the services of such officers, employees, and other personnel of the departments and agencies from which functions have been transferred to the Secretary for such period of time as may reasonably be needed to facilitate the orderly transfer of functions under this Act. 42 USC 7299.

CIVIL SERVICE COMMISSION REPORT

SEC. 712. The Civil Service Commission shall, as soon as practicable but not later than one year after the effective date of this Act, prepare Transmittal to Congress. 42 USC 7300.

and transmit to the Congress a report on the effects on employees of the reorganization under this Act, which shall include—

Contents.

(1) an identification of any position within the Department or elsewhere in the executive branch, which it considers unnecessary due to consolidation of functions under this Act;

(2) a statement of the number of employees entitled to pay savings by reason of the reorganization under this Act;

(3) a statement of the number of employees who are voluntarily or involuntarily separated by reason of such reorganization;

(4) an estimate of the personnel costs associated with such reorganization;

(5) the effects of such reorganization on labor management relations; and

(6) such legislative and administrative recommendations for improvements in personnel management within the Department as the Commission considers necessary.

ENVIRONMENTAL IMPACT STATEMENTS

42 USC 7301.

SEC. 713. The transfer of functions under titles III and IV of this Act shall not affect the validity of any draft environmental impact statement published before the effective date of this Act.

TITLE VIII—ENERGY PLANNING

NATIONAL ENERGY POLICY PLAN

42 USC 7321.

SEC. 801. (a) The President shall—

(1) prepare and submit to the Congress a proposed National Energy Policy Plan (hereinafter in this title referred to as a "proposed Plan") as provided in subsection (b);

(2) seek the active participation by regional, State, and local agencies and instrumentalities and the private sector through public hearings in cities and rural communities and other appropriate means to insure that the views and proposals of all segments of the economy are taken into account in the formulation and review of such proposed Plan;

(3) include within the proposed Plan a comprehensive summary of data pertaining to all fuel and energy needs of persons residing in—

(A) areas outside standard metropolitan statistical areas; and

(B) areas within standard metropolitan statistical areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas.

Biennial transmittal to Congress. Contents.

(b) Not later than April 1, 1979, and biennially thereafter, the President shall transmit to the Congress the proposed Plan. Such proposed Plan shall—

(1) consider and establish energy production, utilization, and conservation objectives, for periods of five and ten years, necessary to satisfy projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation, paying particular attention to the needs for full employment, price stability, energy security, economic growth, environmental protection, nuclear non-proliferation, special regional needs, and the efficient utilization of public and private resources;

(2) identify the strategies that should be followed and the resources that should be committed to achieve such objectives, forecasting the level of production and investment necessary in each of the significant energy supply sectors and the level of conservation and investment necessary in each consuming sector, and outlining the appropriate policies and actions of the Federal Government that will maximize the private production and investment necessary in each of the significant energy supply sectors consistent with applicable Federal, State, and local environmental laws, standards, and requirements; and

(3) recommend legislative and administrative actions necessary and desirable to achieve the objectives of such proposed Plan, including legislative recommendations with respect to taxes or tax incentives, Federal funding, regulatory actions, antitrust policy, foreign policy, and international trade.

(c) The President shall submit to the Congress with the proposed Plan a report which shall include— Report to Congress.

(1) whatever data and analysis are necessary to support the objectives, resource needs, and policy recommendations contained in such proposed Plan;

(2) an estimate of the domestic and foreign energy supplies on which the United States will be expected to rely to meet projected energy needs in an economic manner consistent with the need to protect the environment, conserve natural resources, and implement foreign policy objectives;

(3) an evaluation of current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;

(4) a summary of research and development efforts funded by the Federal Government to forestall energy shortages, to reduce waste, to foster recycling, to encourage conservation practices, and to otherwise protect environmental quality, including recommendations for developing technologies to accomplish such purposes; and

(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal, State, and local governments and nongovernmental entities to achieve the purposes of the Plan.

(d) The President shall insure that consumers, small businesses, and a wide range of other interests, including those of individual citizens who have no financial interest in the energy industry, are consulted in the development of the Plan. Consultation.

CONGRESSIONAL REVIEW

SEC. 802. (a) Each proposed Plan shall be referred to the appropriate committees in the Senate and the House of Representatives. Plan, referral to congressional committees. 42 USC 7322.

(b) Each such committee shall review the proposed Plan and, if it deems appropriate and necessary, report to the Senate or the House of Representatives legislation regarding such Plan which may contain such alternatives to, modifications of, or additions to the proposed Plan submitted by the President as the committee deems appropriate. Report to Congress.

TITLE IX—EFFECTIVE DATE AND INTERIM APPOINTMENTS

EFFECTIVE DATE

Publication in Federal Register. Regulations. 42 USC 7341.

SEC. 901. The provisions of this Act shall take effect one hundred and twenty days after the Secretary first takes office, or on such earlier date as the President may prescribe and publish in the Federal Register, except that at any time after the date of enactment of this Act, (1) any of the officers provided for in title II and title IV of this Act may be nominated and appointed, as provided in those titles, and (2) the Secretary and the Commission may promulgate regulations pursuant to section 705(b)(2) of this Act at any time after the date of enactment of this Act. Funds available to any department or agency (or any official or component thereof), functions of which are transferred to the Secretary or the Commission by this Act, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.

INTERIM APPOINTMENTS

42 USC 7342.

SEC. 902. In the event that one or more officers required by this Act to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this Act, the President may designate any officer, whose appointment was required to be made, by and with the advice and consent of the Senate, and who was such an officer immediately prior to the effective date of the Act, to act in such office until the office is filled as provided in this Act. While so acting such persons shall receive compensation at the rates provided by this Act for the respective offices in which they act.

TITLE X—SUNSET PROVISIONS

SUBMISSION OF COMPREHENSIVE REVIEW

Submittal to Congress. 42 USC 7351.

SEC. 1001. Not later than January 15, 1982, the President shall prepare and submit to the Congress a comprehensive review of each program of the Department. Each such review shall be made available to the committee or committees of the Senate and House of Representatives having jurisdiction with respect to the annual authorization of funds, pursuant to section 660, for such programs for the fiscal year beginning October 1, 1982.

CONTENTS OF REVIEW

42 USC 7352.

SEC. 1002. Each comprehensive review prepared for submission under section 1001 shall include—

(1) the name of the component of the Department responsible for administering the program;

(2) an identification of the objectives intended for the program and the problem or need which the program was intended to address;

(3) an identification of any other programs having similar or potentially conflicting or duplicative objectives;

(4) an assessment of alternative methods of achieving the purposes of the program;

(5) a justification for the authorization of new budget authority, and an explanation of the manner in which it conforms to and integrates with other efforts;

(6) an assessment of the degree to which the original objectives of the program have been achieved, expressed in terms of the performance, impact, or accomplishments of the program and of the problem or need which it was intended to address, and employing the procedures or methods of analysis appropriate to the type or character of the program;

(7) a statement of the performance and accomplishments of the program in each of the previous four completed fiscal years and of the budgetary costs incurred in the operation of the program;

(8) a statement of the number and types of beneficiaries or persons served by the program;

(9) an assessment of the effect of the program on the national economy, including, but not limited to, the effects on competition, economic stability, employment, unemployment, productivity, and price inflation, including costs to consumers and to businesses;

(10) an assessment of the impact of the program on the Nation's health and safety;

(11) an assessment of the degree to which the overall administration of the program, as expressed in the rules, regulations, orders, standards, criteria, and decisions of the officers executing the program, are believed to meet the objectives of the Congress in establishing the program;

(12) a projection of the anticipated needs for accomplishing the objectives of the program, including an estimate if applicable of the date on which, and the conditions under which, the program may fulfill such objectives;

(13) an analysis of the services which could be provided and performance which could be achieved if the program were continued at a level less than, equal to, or greater than the existing level; and

(14) recommendations for necessary transitional requirements in the event that funding for such program is discontinued, including proposals for such executives or legislative action as may be necessary to prevent such discontinuation from being unduly disruptive.

Approved August 4, 1977.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-346, pt. I (Comm. on Government Operations) and No. 95-346, pt. II (Comm. on Post Office and Civil Service), both parts accompanying H.R. 6804, and 95-539 (Comm. of Conference).

SENATE REPORTS: No. 95-164 (Comm. on Governmental Affairs) and No. 95-367 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 123 (1977):

May 18, considered and passed Senate.

June 2, H.R. 6804 considered in House.

June 3, considered and passed House, amended, in lieu of H.R. 6804.

Aug. 2, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 13, No. 32:

Aug. 4, Presidential statement.

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